4-4-89
Vol. 54 No. 63

# federal register

Tuesday
April 4, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-4-89
Vol. 54 No. 63
Pages 13505-13662

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** April 11, at 9:00 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
**RESERVATIONS:** 202–523–5240

### SALT LAKE CITY, UT

**WHEN:** April 12, at 9:00 a.m.
**WHERE:** State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
**RESERVATIONS:** Call the Utah Department of Administrative Services, 801–538–3010

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

[Docket No. 88-401]

### Revision of Delegation of Authority

**AGENCY:** Office of the Secretary, USDA.
**ACTION:** Final rule.

**SUMMARY:** This document amends the delegations of authority from the Secretary of Agriculture to indicate that the Forest Service is jointly administering gypsy moth eradication activities with the Animal and Plant Health Inspection Service (APHIS). Formerly, the Secretary had delegated authority for these activities solely to the Assistant Secretary for Marketing and Inspection Services, who in turn delegated the authority to the Administrator of the Animal and Plant Health Inspection Service. This action is intended to ensure a more effective gypsy moth program.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** T.G. Flanigan, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

**SUPPLEMENTARY INFORMATION:**

#### Background

This document amends the delegation of authority for activities under the program to eradicate gypsy moth. The gypsy moth, *Lymantria dispar* (Linnaeus), is a highly destructive pest of forest and shade trees. Currently, the Northeastern and mid-Atlantic States and Michigan are considered generally infested areas. Animal and Plant Health Inspection Service (APHIS) regulations quarantine these States and restrict the interstate movement of certain regulated articles from regulated areas within these States. Also, APHIS carries out detection activities throughout the remainder of the nation to find new infestations of gypsy moth. Prior to the effective date of this document, APHIS also assumed complete responsibility for cooperating with the States to control or eradicate these isolated infestations.

The Secretary has determined that certain gypsy moth eradication activities can be most effectively administered by the Forest Service. The Chief of the Forest Service administers forest insect, disease, and other pest management programs under 16 U.S.C. 2104. Forest Service personnel have considerable expertise and experience in conducting forest pest management programs. Pursuant to the amended delegation of authority, Forest Service personnel are assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations of over 640 acres on State and private lands. APHIS is continuing to conduct survey and regulatory activities, and retains primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

The authority to conduct programs to eradicate plant pests, such as gypsy moth, is contained in section 102 of the Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a-148e). Also, the Talmadge Aiken Act (7 U.S.C. 450) confers authority to cooperate with States in control and eradication efforts. Formerly, the Secretary had delegated these authorities solely to the Assistant Secretary for Marketing and Inspection Services, who in turn delegated the authority to the Administrator of APHIS. This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Chief of the Forest Service the primary authority for the eradication activities mentioned above. This document also amends the delegations to the Assistant Secretary for Marketing and Inspection Services and the Administrator of APHIS to reflect the limitation on their authority for gypsy moth eradication activities.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. In § 2.17, paragraph (b)(2) is revised to read as follows:

**§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.**

* * * * *

(b) * * *

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a-148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

* * * * *

### Subpart D—Delegation of Authority to Other General Officers and Agency Heads

3. In § 2.42, a new paragraph (q) is added to read as follows:

**§ 2.42 Delegations of authority to the Chief of the Forest Service.**

* * * * *

(q) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

### Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

4. In § 2.51, paragraph (a)(2) is revised to read as follows:

**§ 2.51 Administrator, Animal and Plant Health Inspection Service.**

(a) * * *

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

* * * * *

Dated: March 29, 1989.

For Subparts C and D.

**Clayton Yeutter,**

*Secretary of Agriculture.*

Dated: March 29, 1989.

For Subpart F.

**Robert Melland,**

*Acting Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 89–7925 Filed 4–3–89; 8:45 am]

BILLING CODE 3410–34–M

## Animal and Plant Health Inspection Service

**[Docket No. 88–182]**

### 7 CFR Part 354

### Overtime Services Relating to Imports and Exports

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing overtime services relating to imports and exports by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Plant Protection and Quarantine" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility under the regulations.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 354 concern overtime services relating to imports and exports. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Plant Protection and Quarantine, of the Animal and Plant Health Inspection Service, is the official responsible for various decisions under the regulations. We are revising 7 CFR Part 354 to indicate that the primary responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are replacing all references to "Deputy Administrator" with references to "Administrator," and are replacing all references to "Plant Protection and Quarantine" with references to "Animal and Plant Health Inspection Service." We are making similar changes in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 354**

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are amending 7 CFR Part 354 as follows:

### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260; 49 U.S.C.1741; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 354.1 [Amended]**

2. In § 354.1, paragraph (a)(1), remove the words "Plant Protection and Quarantine the first time they appear, and add, in their place, the words "the Animal and Plant Health Inspection Service".

3. In § 354.1, remove the words "Plant Protection and Quarantine" the second time they appear in paragraph (a)(1), and where they appear in the introductory text of paragraph (b), and add, in their place, the words "Animal and Plant Health Inspection Service".

4.In § 354.1, paragraph (a)(2), remove the words "Deputy Administrator, Plant Protection and Quarantine" and add, in their place, the words "Administrator, Animal and Plant Health Inspection Service".

Done in Washington, DC, this 30th day of March 1989.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–7967 Filed 4–3–89; 8:45 am]

BILLING CODE 3410–34–M

**Agricultural Marketing Service**

**7 CFR Part 979**

**[FV-89-013]**

## Melons Grown in South Texas; Amendment to Advance Termination Date of Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule advances the annual termination date for the South Texas melon handling regulation from June 30 to June 20. The current period is from May 1 through June 30 of each season. Late season melon shipments are made from the Laredo-Coastal Bend district of the production area. Advancing the termination date will relieve restrictions on handlers during the latter part of the season.

**EFFECTIVE DATE:** May 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 447-2431.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. The agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of melons subject to regulation under the South Texas Melon Marketing Order and approximately 75 melon producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

The South Texas Melon Committee in a telephone vote completed on November 10, 1988, unanimously recommended a change in the effective period of the handling regulation. The handling regulation currently is in effect from May 1 through June 30 of each season. Current requirements for cantaloups are a minimum of U.S. Commercial grade with not more than eight percent serious damage. For honeydew melons, at least 50 percent of each lot must be U.S. Commercial grade or better with a 20 percent tolerance for serious damage. Honeydew melons are also required to have a minimum of eight percent sugar. Container and marking requirements are also in effect.

The production area covered by the marketing order consists of two districts—the Lower Valley and the Laredo-Coastal Bend areas. By far, the larger portion of the crop is grown in the Lower Valley. During the 1988 season, this district shipped about 5.9 million cartons of cantaloups and 3.9 million cartons of honeydew melons, accounting for over 95 percent of the total volume of melons shipped from the production area. Harvest begins about the first of May, with peak volume from May 15 through June 20.

The Laredo-Coastal Bend district, in the northern part of the production area, has a somewhat later shipping season, with the bulk of its movement occurring in late June. Harvest begins about the first of June, with peak volume from June 15 through June 30.

South Texas is typically the first domestic supplier of cantaloups and honeydew melons each year, and for a brief period early in the season there is virtually no competition from other domestic sources. Later in the season, however, large volumes of melons are available from California and Arizona, as well as from the Trans-Pecos and Winter Garden areas of Texas.

The increased availability of melons is reflected in the prices received by South Texas shippers. According to the committee's 1988 annual report, for example, the f.o.b. price for a 15-count container of cantaloups averaged $22.00 during the week of May 9-15, and had declined to an average of $9.00 during the week of June 13-19. For the same two weeks, the average f.o.b. price for 8-count cartons of honeydew melons was $8.33 and $3.03 respectively.

Due to its later shipping season, the Laredo-Coastal Bend district faces a more competitive marketplace and generally receives lower prices for its melons than does the Lower Valley. At the same time, inspection costs tend to be higher due to distance of the Laredo-Coastal Bend district from Federal-State inspection facilities.

To recognize the different marketing situation existing in late June, the committee recommended ending the handling requirements (including mandatory inspection) on June 20. This action will enable late season shippers to compete more effectively and should improve returns to growers. In addition, not imposing the quality requirements on shipments made after June 20 will not have an adverse affect on the overall effectiveness of the program, because a relatively small volume (less than five percent in 1988) of melons is shipped after that date.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given in the January 31, 1989, **Federal Register** (54 FR 4829) providing interested persons until March 2, 1989, to file written comments. None were received.

After consideration of all relevant information, including the proposal set forth in the notice, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 979**

Marketing agreements and orders, melons, Texas.

For the reasons set forth in the preamble, 7 CFR Part 979 is hereby amended as follows:

## PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979, Melons Grown in South Texas, continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

**§ 979.304 [Amended]**

2. Section 979.304 is amended by changing "June 30" to read "June 20 of" in the introductory text.

Dated: March 30, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-7928 Filed 4-3-89; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 982**

**[Docket No. FV-88-133FR]**

## Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1988-89 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action establishes final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1988-89 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages will specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the order.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order and Agreement No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can support throughout the season and the percentages release the inshell trade demand. Preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. Interim final percentages release 100 percent of the inshell trade demand computed by the Board. On or before November 15, the Board must meet to recommend to the Secretary final percentages which release 100 percent of the inshell trade demand plus 15 percent of the three year average trade acquisitions of inshell filberts. The additional 15 percent above the 100 percent of the inshell trade demand is released to provide for an adequate carryover into the following season. The Board's recommendation and this final rule are based on requirements specified in the order.

This final rule will restrict the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation to the Secretary. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

On August 30, 1988, the Board reviewed and adopted its marketing policy and unanimously recommended the use of volume control regulations for the 1988-89 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) early in the 1988-89 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced at its August 30, 1988, meeting, preliminary free and restricted percentages of 16 and 84 percent, respectively, to release 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet on or before November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim final and final free and restricted percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim

percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions which are used to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

The Board met on November 15, 1988, reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1988–89 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. The final marketing percentages are based on the industry's final production estimates and release 4,069 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 18,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 15,500 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 15,500 tons.

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to at least 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (417 tons) has been included in the calculations used in determining the inshell trade demand. The final percentages, which would release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisition, would make available 125 percent of prior years' sales, thus exceeding the requirements of the Guidelines.

The marketing percentages are based on the industry's initial production estimates and the following supply and demand information for the 1988–89 marketing year:

| Inshell supply | Tons |
|---|---|
| (1) Total production (Filbert/Hazelnut Marketing Board Handler survey estimate) | 15,500 |
| (2) Less substandard, farm use (disappearance) | 866 |
| (3) Merchantable production (the Board's adjusted crop estimate) | 14,634 |
| (4) Plus undeclared carryin as of July 1, 1988, subject to regulation | 0 |
| (5) Supply subject to regulation (Item 3 plus Item 4) | 14,634 |
| (6) Average trade acquisition based on three prior years' domestic sales | 4,172 |
| (7) Increase to encourage increased sales (10 percent) | 417 |
| (8) Less declared carryin as of July 1, 1988, not subject to regulation | 1,146 |
| (9) Inshell Trade Demand | 3,443 |
| (10) 15 percent of the average trade acquisitions based on three years domestic sales | 626 |
| (11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10) | 4,069 |

| Percentages | Free | Restricted |
|---|---|---|
| (12) Final percentages (Item 11 divided by Item 5)×100 | 28 | 72 |

This action was proposed in the January 24, 1989, issue of the **Federal Register** (54 FR 3460). Comments on the proposed rule were invited from interested persons until February 23, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1988–89 marketing year began July 1, 1988, and the percentages established herein apply to all merchantable filberts handled from the beginning of the crop year; and (2) handlers are aware of this action, which was recommended by the Board at an open meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages.

**List of Subjects in 7 CFR Part 982**

Filberts/hazelnuts, Marketing agreements and orders, Oregon, Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

## PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### Subpart—Grade and Size Regulation

2. Section 982.238 is added to read as follows:

**Note:** The following section will not be published in the Code of Federal Regulations.

**§ 982.238 Final free and restricted percentages—1988–89 marketing year.**

The final free and restricted percentages for merchantable filberts/hazelnuts for the 1988–89 marketing year shall be 28 and 72 percent, respectively.

Dated: March 30, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–7929 Filed 4–3–89; 8:45 am]

BILLING CODE 3410–02–M

## 7 CFR Part 985

**[FV–88–023FR]**

## Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1988–89 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule invites comments on increasing the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from,

or handled for, producers by handlers during the 1988–89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, the agency responsible for local administration of the order.

**EFFECTIVE DATE:** Interim final rule effective March 31, 1989. Comments which are received by May 4, 1989, will be considered prior to any finalization of this interim final rule.

**ADDRESS:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. They will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its January 26 and March 6, 1989, meetings, unanimously recommended that the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1988–89 marketing year be increased. The 1988–89 salable quantities and allotment percentages for those classes of oil were first published in a final rule in the March 1, 1988, issue of the **Federal Register** (53 FR 6129). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Scotch spearmint oil for the 1988–89 marketing year was published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281). Comments were to be received by September 19, 1988. That interim final rule increased the 1988–89 salable quantity for Scotch spearmint oil from 650,131 to 766,387 pounds and the allotment percentage from 39 to 46 percent.

An interim final rule, modifying the August 18, 1988, interim final rule by increasing the salable quantity of Scotch spearmint oil from 766,387 to 883,011 pounds and increasing the allotment percentage from 46 to 53 percent, was published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 701,077 to 793,143 pounds and increased the allotment percentage from 38 to 43 percent. The increases in the September 30, 1988, interim final rule were adopted without modification in a final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962). Those revisions were issued pursuant to § 985.52(a) of the spearmint oil marketing order.

This new interim final rule modifies the January 11, 1989, final rule by increasing the salable quantity of Scotch spearmint oil from 883,011 to 966,314 pounds and increasing the allotment percentage from 53 to 58 percent. In addition, this interim final rule increases the salable quantity of Native spearmint oil from 791,772 to 966,698 pounds and increases the allotment percentage from 43 to 52.5 percent. These revisions are issued pursuant to § 985.52(a) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

**Scott Spearmint Oil**

At its August 12, 1987, meeting the Committee estimated trade demand for Scotch spearmint oil for the 1988–89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area (South Dakota). This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent, which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988–89 Scotch allotment percentage which resulted in a 1988–89 salable quantity of 650,101 pounds.

At the time of the July 6, 1988, Committee meeting, the 1988–89 salable percentage of 39 percent, when applied to the then current total allotment base of 1,666,059 pounds, gave a 1988–89 salable quantity of 649,763 pounds. Since all growers either produced their individual salable quantity or filled any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1988, was 683,644 pounds, and was the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of

Scotch oil, higher than the Committee had estimated.

The Committee, at its July 6, 1988, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds were added to the total supply available of 683,644 pounds, the resulting 800,268 pounds was between the five-year average sales of 758,682 pounds and the highest year of sales of 868,262 pounds. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 650,101 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 pounds resulted in a total available supply of 800,268 pounds. Thus, the interim final rule published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281) increased the salable quantity for Scotch spearmint oil from 650,101 to 766,387 pounds and increased the allotment percentage from 39 to 46 percent.

Estimates at the time of the July 6, 1988, Committee meeting indicated that a maximum of 50 percent of a normal crop would be harvested in the Midwest this year. The demand for Far West Scotch oil increased as buyers of Midwest Scotch oil substituted Far West oil for Midwest oil. A considerable amount of contracting of the 1988–89 crop, including the additional quantity of Scotch oil recommended at the July 6, 1988, meeting, occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were therefore required.

At its August 10, 1988, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 46 to 53 percent resulting in an increase in the salable quantity from 766,387 to 883,011 pounds. This figure, added to the June 1, 1988, carry-in of 33,881 pounds, resulted in a total available supply of 916,892 pounds. Thus, the interim final rule published in the September 30, 1988, issue of **Federal Register** (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), increased the salable quantity for Scotch spearmint oil from 766,387 to 883,011 pounds and increased the allotment percentage from 46 to 53 percent.

At its January 26, 1989, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by further increasing the salable quantity and allotment percentage. Total sales as of January 26, 1989, are the highest on record. Both buyer and grower input indicate that there will likely be 30,000 to 40,000 pounds of additional demand over the next several months. When the estimated amount that has been sold to date of 888,653 pounds is deducted from the total supply available of 916,892 pounds, the resulting 28,239 pounds is the amount that is currently available to be marketed. This is considered by the Committee to be less than desirable for this time in the marketing year. The Committee therefore recommended that the 1988–89 Scotch spearmint oil salable percentage be increased from 53 to 58 percent resulting in an increase in the salable quantity from 883,011 to 966,314 pounds with only 932,255 pounds being made available. Although 5 percent of the total 1988–89 allotment base figure of 1,666,059 pounds results in a figure of 83,303 pounds, this action makes only 49,244 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil. Because the deadline for filling another grower's deficiency is October 31, the additional allotment made available to growers without pool oil will not be available to market. Therefore, a certain amount of the additional allotment resulting from this increase cannot be used to make additional oil available to the market. The following table summarizes the computations used in arriving at the Committee's recommendations:

[In pounds]

| | Recommendation August 12, 1987 | Recommendation July 6, 1988 | Recommendation August 10, 1988 | Recommendation January 26, 1989 |
|---|---|---|---|---|
| (1) Carry-in | 15,703 | 33,881 | 33,881 | 33,881 |
| (2) Total supply available | 665,834 | 800,268 | 916,892 | [3] 966,136 |
| (3) Desirable carry-out | 0 | 0 | 0 | 0 |
| (4) Salable quantity | [1] 645,360 | [2] 766,387 | [2] 883,011 | 966,314 |
| (5) Total allotment bases for Scotch oil | 1,667,002 | 1,666,059 | 1,666,059 | 1,666,059 |
| (6) Allotment percentage | 39 | 46 | 53 | 58 |
| (7) Adjusted salable quantity | 650,101 | 766,387 | 883,011 | [2] 932,255 |

[1] Salable quantity equals trade demand minus carry-in and minus an additional 100,000 pounds of Scotch oil expected to be available from South Dakota, which is outside the production area.

[2] Total supply available minus carry-in.

[3] Although 5 percent of the total 1988–89 allotment base figure of 1,666,059 pounds results in a figure of 83,303 pounds, the action taken makes only 49,244 pounds available. This number is adjusted because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 58 percent should be established for Scotch spearmint oil for the 1988–89 marketing year. This percentage makes available 966,136 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

**Native Spearmint Oil**

In addition, at its August 12, 1987, meeting, the Committee estimated trade demand for Native spearmint oil for the 1988–89 marketing year to be 750,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 750,000 pounds. The Committee estimated that 50,000 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 700,000 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,844,940 pounds, resulted in 37.9 percent which was the computed allotment percentage. This

figure was adjusted to 38 percent and established as the 1988–89 Native allotment percentage which resulted in a 1988–89 salable quantity of 701,077 pounds based on the estimated total base of 1,844,940 pounds.

The 1988–89 salable percentage of 38 percent, when applied to the revised total allotment base of 1,841,330 pounds, gave a 1988–89 salable quantity of 699,705 pounds. Since all growers either produced their individual salable quantity or filled deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1988, was 703,107 pounds, and was the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 3,402 pounds of Native oil, which was lower than the Committee had estimated.

Extensive surveys of growers and buyers led the Committee to an estimate of 610,479 pounds as the amount of the 1988–89 total available supply that was committed to the market. This was the highest amount that had been sold or committed to be sold at that time of the year. When the estimated amount that was committed to the market of 610,479 pounds was deducted from the total supply available of 703,107 pounds, the result of 92,628 pounds was the amount made available to the market. This was considered by the Committee to be less than was desirable for that early in the marketing year. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Native oil was required. The Committee recommended increasing the salable percentage by 5 percent, from 38 to 43 percent, thus making an additional 92,067 pounds (0.05 x 1,841,330 pounds which was the then current total of allotment bases for Native oil) available to the market. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Native salable percentage be increased from 38 to 43 percent resulting in an increase in the salable quantity from 699,705 to 791,772 pounds. This figure added to the June 1, 1988, carry-in of 3,402 pounds resulted in a total available supply of 795,173 pounds. Thus, the inteim final rule published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), increased the salable quantity for Native spearmint oil from 701,077 to 791,772 pounds and increased the allotment percentage from 38 to 43 percent.

As its January 26, 1989, meeting, the Committee unanimously voted to make more Native spearmint oil available to the market by further increasing the salable quantity and allotment percentage. When the total sales of 766,249 pounds is deducted from the total supply available of 795,173 pounds, the resulting 28,924 pounds is the amount that is currently available to the market. This is considered by the Committee to be less than is desirable for this time in the marketing year. The Committee therefore recommended that the 1988–89 Native spearmint oil salable percentage be increased from 43 to 49 percent resulting in an increase in the salable quantity from 791,772 to 893,416 pounds. Although 6 percent of the total 1988–89 allotment base figure of 1,841,330 pounds results in a figure of 110,480 pounds, the action taken makes only 101,644 pounds available. This is because some growers do not have reserve pool oil, and therefore will not be able to fill the increased salable quantity with their own oil.

At its March 6, 1989, meeting, the Committee unanimously voted to revise its January 26, 1989, recommendation. Market activity shortly after the January 26 meeting was unexpectedly brisk and resulted in a depletion of the bulk of the available Native spearmint oil. In addition, buyers made commitments with growers to buy the Native spearmint oil that would be available upon approval of the January 26 increase. By March 6, the total amount of sales and Native spearmint oil committed to be sold was estimated to be 856,817 pounds.

When the total sales of 856,817 pounds is deducted from the total supply available of 896,817 pounds, the resulting 40,000 pounds is the amount that is currently available to the market. This is considered by the Committee to be less than is desirable for this time in the marketing year. The Committee therefore revised its January 26 recommendation and recommended that the 1988–89 Native spearmint oil salable percentage be further increased from 49 to 52.5 percent resulting in an increase in the salable quantity from 893,415 to 966,698 pounds with only 951,314 pounds being made available. Although the additional 3.5 percent of the total 1988–89 allotment base figure of 1,841,330 pounds results in a figure of 64,447 pounds, the action taken makes only 57,898 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil. The following table summarizes the computations used in arriving at the Committee's recommendations.

[In pounds]

| | Recommendation August 12, 1987 | Recommendation August 10, 1988 | Recommendation January 26, 1989 | Recommendation March 6, 1989 |
|---|---|---|---|---|
| (1) Carry-in | 50,000 | 3,402 | 3,402 | 3,402 |
| (2) Quantity available | 750,000 | 795,174 | [1] 896,817 | [2] 954,716 |
| (3) Desirable carryout | 0 | 0 | 0 | 0 |
| (4) Salable quantity | 700,000 | 791,772 | 902,252 | 966,698 |
| (5) Total allotment base for Native | 1,844,940 | 1,841,330 | 1,841,330 | 1,841,330 |
| (6) Allotment percentage | 38 | 43 | 49 | 52.5 |
| (7) Adjusted salable quantity | 701,077 | 791,772 | [1] 893,415 | [2] 951,314 |

[1] Although 6 percent of the total 1988–89 allotment base figure of 1,842,330 pounds results in a figure of 110,480 pounds, the action taken makes 101,664 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

[2] Although the additional 3.5 percent of the total 1988–89 allotment base figure of 1,841,330 pounds results in a figure of 64,447 pounds, the action taken makes only 57,898 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 52.5 percent should be established for Native spearmint oil for the 1988–89 marketing year. This percentage makes available 954,716 pounds of Far West Native

spearmint oil to handlers of Far West spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129); the interim final rule published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281); the interim final rule published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281); and the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), in connection with the initial establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by increasing the quantities of Scotch and Native spearmint oils that may be marketed for the 1988–89 marketing year; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch and Native spearmint oils.

**List of Subjects in 7 CFR Part 985**

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

Note.—This section will not appear in the Code of Federal Regulations.

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 985.208 is revised to read as follows:

**§ 985.208 Salable quantities and allotment percentages—1988–89 marketing year.**

(a) "Class 1" Oil—a salable quantity of 966,314 pounds and an allotment percentage of 58 percent.

(b) "Class 3" Oil—a salable quantity of 966,698 pounds and an allotment percentage of 52.5 percent.

Dated: March 30, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-7965 Filed 4-3-89; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 103

**[Atty. Gen. Order No. 1332-89]**

### INS/EOIR Fee Schedule

**AGENCY:** Immigration and Naturalization Service, Executive Office for Immigration Review, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the fee schedule of the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR). These changes are necessary to place the financial burden of providing special services and benefits, which do not accrue to the public at large, on the recipients. Charges have been adjusted to more nearly reflect the current cost of providing the benefits and services, taking into account public policy and other pertinent facts.

**EFFECTIVE DATE:** May 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-4705.

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA. 22041, Telephone: (703) 756-6470.

**SUPPLEMENTARY INFORMATION:** The INS and EOIR published a proposed rule on December 14, 1988, at 53 FR 50230, to amend the schedule of fees charged by the INS and EOIR for processing and adjudication of applications, petitions, motions, and requests submitted by the public.

Comments were received from individuals and organizations, including professional and service associations, universities, attorneys, non-profit organizations, field directors, and members of the general public. All 20 comments received on or before January 13, 1989, as well as those received subsequent to that date, were fully considered before preparing this final rule. The following summary addresses the substantive comments. Many commenters believe that the fee increases are unwarranted, others believe that the proposed increases are based on other than cost, or even should be based on other than cost. The INS and EOIR believe it is clear that 31 U.S.C. 9701 and OMB Circular A-25 require Federal agencies to establish a fee system in which a benefit or service provided to or for any person be self-sustaining to the fullest extent possible. We believe arguments to the contrary are wholly without merit. Fees are neither intended to replace nor to be influenced by the budgetary process and related considerations, but instead, to be governed by the total cost to the agency to provide the service. A policy of setting fees on any basis other than cost would violate this principle. The INS and EOIR have therefore attempted as fairly and accurately as possible to ascertain the cost of providing each specific benefit or service and to set the pertinent fee accordingly. The fee structure adheres to the cost principle.

Several commenters were concerned above the effects of fee increases on certain segments of the student population. However, in view of the substantial financial commitment that is necessary to seek an education in the United States, it is not likely to influence educational decisions. Several commenters aver that the proposed rule did not publish the study upon which the proposed fee increases were based, and that this study was not made available for public inspection and analyses. This is not the case. This study has always been available upon request, pursuant to the Freedom of Information Act, 5 U.S.C. 552. No requests were received.

Since the regulations already provide for the waiver of a fee when it is shown that the recipient is unable to pay, the new fee schedule does not prohibit applications or requests on the basis of the inability to pay as some of the commenters suggested. Furthermore, several fees are at less than full cost recovery recognizing long-standing public policy and the interest served by these processes. Accordingly, the following fee changes are adopted as proposed. In addition, this rule includes

minor technical charges to update the existing fee schedule by removing Forms N–580 and N–604.

1. Increase the fee from $50 to $75 for filing Form I–17, application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof.

2. Increase the fee from $15 to $35 for filing Form I–90, application for Alien Registration Receipt Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name.

3. Increase the fee from $15 to $35 for filing Form I–102, application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed.

4. Increase the fee from $35 to $50 for filing Form I–129B, petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act.

5. Increase the fee from $35 to $40 for filing Form I–129F, petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act.

6. Increase the fee from $35 to $50 for filing Form I–129L, petition to employ intra-company transferee.

7. Increase the fee from $35 to $40 for filing Form I–130, petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act.

8. Increase the fee from $15 to $45 for filing Form I–131, application for issuance of reentry permit.

9. Increase the fee from $35 to $50 for filing Form I–140, petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act.

10. Increase the fee from $15 to $50 for filing Form I–193, application for waiver of passport and/or visa.

11. Increase the fee from $35 to $45 for filing Form I–212, application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation.

12. Increase the fee from $125 to $155 for filing Form I–246, application for stay of deportation under Part 243 of this Chapter.

13. Increase the fee from $50 to $110 for filing Form I–290B, appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of $110 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

14. Increase the fee from $50 to $60 for filing Form I–485, application on Form I–485 for permanent residence status or for creation of a record of lawful permanent residence.

15. Increase the fee from $15 to $35 for filing Form I–506, application for change of nonimmigrant classification under section 248 of the Act.

16. Increase the fee from $15 to $35 for filing Form I–538, application by a nonimmigrant student (F–1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training.

17. Increase the fee from $15 to $35 for filing Form I–539, application for extension of stay of a nonimmigrant, other than one described in section 101(a)(15)(F) or 101(a)(15)(J) of the Act, and, upon a basis of reciprocity, a nonimmigrant described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v) of the Act.

18. Increase the fee from $15 to $45 for filing Form I–570, application for issuance or extension of refugee travel document.

19. Increase the fee from $50 to $75 for filing Form I–600, petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $75 will be required).

20. Increase the fee from $50 to $100 for filing Form I–600A, application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $100 will be required).

21. Increase the fee from $35 to $45 for filing Form I–601, application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee of $45 shall be required when the alien is applying simultaneously for a waiver under both sub-sections).

22. Increase the fee from $15 to $50 for filing Form N–410, motion for amendment of petition for naturalization when motion is for the convenience of the petitioner.

23. Increase the fee from $15 to $40 for filing Form N–455, application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, Pub. L. 90–633.

24. Increase the fee from $15 to $55 for filing Form N–470, application for section 316(b) or 317 of the Act benefits.

25. Increase the fee from $15 to $50 for filing Form N–565, application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; or for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act.

26. Increase the fee from $15 to $50 for filing Form N–577, application for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act.

27. Increase the fee from $35 to $60 for filing Form N–600, application for certificate of citizenship under section 309(c) or section 341 of the Act.

28. Increase the fee from $50 to $110 for filing motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision).

29. Increase the fee from $15 to $50 for filing Form N–300/315, for receiving and filing a declaration intention.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 continues to read as follows:

**Authority:** 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

§ 103.7 [Amended]

2. In § 103.7, paragraph (b)(1) is amended as follows:

a. Increase the fee for Form I–17 from "$50.00" to "$75.00".

b. Increase the fee for Form I–90 from "$15.00" to "$35.00".

c. Increase the fee for Form I–102 from "$15.00" to "$35.00".

d. Increase the fee for Form I–129B from "$35.00" to "$50.00".

e. Increase the fee for Form I–129F from "$35.00" to "$40.00".

f. Add the entry "Form I–129L. Petition to employ intracompany transferee—$50.00".

g. Increase the fee for Form I–130 from "$35.00" to "$40.00".

h. Increase the fee for Form I–131 from "$15.00" to "$45.00".

i. Increase the fee for Form I–140 from "$35.00" to "$50.00".

j. Increase the fee for Form I–193 from "$15.00" to "$50.00".

k. Increase the fee for Form I–212 from "$35.00" to "$45.00".

l. Increase the fee for Form I–246 from "$125.00" to "$155.00".

m. Increase the fee for Form I–290B from "$50.00" to "$110.00".

n. Increase the fee for Form I–485 from "$50.00" to "$60.00".

o. Increase the fee for Form I–506 from "$15.00" to "$35.00".

p. Increase the fee for Form I–538 from "$15.00" to "$35.00".

q. Increase the fee for Form I–539 from "$15.00" to "$35.00".

r. Increase the fee for Form I–570 from "$15.00" to "$45.00".

s. Increase the fee for Form I–600 from "$50.00" to "$75.00".

t. Increase the fee for Form I–600A from "$50.00" to "$100.00".

u. Increase the fee for Form I–601 from "$35.00" to "$45.00".

v. Increase the fee for Form N–410 from "$15.00" to "$50.00".

w. Increase the fee for Form N–455 from "$15.00" to "$40.00".

x. Increase the fee for Form N–470 from "$15.00" to "$55.00".

y. Increase the fee for Form N–565 from "$15.00" to "$50.00".

z. Increase the fee for Form N–577 from "$15.00" to "$50.00".

aa. Remove the entry for Form N–580.

bb. Increase the fee for Form N–600 from "$35.00" to "$60.00".

cc. Revise the motion entry as follows: "Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals has appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision) $110.00"

dd. Add a motion entry as follows: "Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision) $110"

§ 103.7 [Amended]

3. In § 103.7, paragraph (b)(3) is amended as follows: Increase the fee for Form N–300/315 from "$15.00" to "$50.00".

Dated: March 27, 1989.

Dick Thornburgh,

*Attorney General.*

[FR Doc. 89–7637 Filed 4–3–89; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 88–175]

### 9 CFR Part 97

### Overtime Services Relating to Imports and Exports

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing overtime services relating to imports and exports by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility under the regulations.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR Part 97 concern overtime services relating to imports and exports. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service, is the official responsible for various decisions under the regulations. We are revising 9 CFR Part 97 to indicate that the primary responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are replacing all references to "Deputy Administrator" with references to "Administrator," and are placing all references to "Veterinary Services" with references to "Animal and Plant Health Inspection Service." We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, we are amending 9 CFR Part 97 as follows:

## PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

§ 97.1 [Amended]

2. In § 97.1, paragraph (a), introductory text, remove the words "Veterinary Services" the first time they appear, and add, in their place, the

words "the Animal and Plant Health Inspection Service".

3. In § 97.1, paragraph (a), introductory text, remove the words "Veterinary Services" the second time they appear, and add, in their place, the words "Animal and Plant Health Inspection Service".

4. In § 97.1, paragraph (b), remove the words "Deputy Administrator, Veterinary Services" and add, in their place, the words "Administrator, Animal and Plant Health Inspection Service".

Done in Washington, DC, this 30th day of March 1989.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-7966 Filed 4-3-89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88-AGL-15]**

### Alteration of Transition Area; Menominee, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the Menominee, MI, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Menominee-Marinette Twin County Airport, Menominee, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 u.t.c., July 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

#### History

On Wednesday, January 25, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Menominee, MI (54 FR 3613). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Menominee, MI. The present transition area is being modified to accommodate existing SIAPs to Menominee-Marinette Twin County Airport. The alterations will consist of a size reduction to the existing control zone extensions, returning that portion of airspace back to the public. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

### PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Menominee, MI [Revised]**

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Menominee-Marinette Twin County Airport (lat. 45°07'36" N., long. 87°38'18" W.) within 2 miles each side of the 352° bearing from the airport extending from the 6.5 mile radius to 11.5 miles north of the airport, within 3 miles each side of the 212° bearing from the airport extending from the 6.5 mile radius to 8.5 miles southwest of the airport.

Issued in Des Plaines, Illinois, on March 22, 1989.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 89-7874 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 71

**[Airspace Docket No. 88-ASW-6]**

### Revision of Transition Area: Athens, TX; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects a typographical error that was published in the **Federal Register** on March 2, 1989 (54 FR 8727), Document 88-ASW-6 concerning the latitude and longitude coordinates of the Athens Airport. The correct coordinates of the Athens Airport are as follows:

Latitude—32°09'48" N.
Longitude—95°49'40" W.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

Issued in Fort Worth, TX, March 20, 1989.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 89-7876 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 71

**[Airspace Docket No. 89-ASO-1]**

### Revision of Transition Area, Athens, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises the Athens, GA, Transition Area by increasing the radius area from 9 to 11.5 miles. This action will provide additional controlled airspace for aircraft executing Standard Instrument Approach Procedures utilizing the Athens, GA, VHF Omnidirectional Range (VOR). It also corrects the airport name and geographical position coordinates.

**EFFECTIVE DATE:** 0901 u.t.c., September 21, 1989.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

### History

On January 25, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Athens, GA, Transition Area (54 FR 3611). The proposed revision would increase the radius of the Transition Area from 9 to 11.5 miles. The proposal provides additional controlled airspace for aircraft executing Standard Instrument Approach Procedures utilizing the Athens, GA, VOR. The airport name will be corrected from Athens Municipal to Athens/Ben Epps Airport. Also, a minor correction would be made to the airport geographic position coordinates. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Athens, GA, transition area by increasing the radius from 9 to 11.5 miles, correcting the official name of the Athens Airport and making a minor correction to the airport geographic position coordinates.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Athens, GA [Revised]**

That airspace extending upward from 700' above the surface within an 11.5-mile radius of Athens/Ben Epps Airport (Lat. 33°56'55"N., Long. 83°19'36"W).

Issued in East Point, Georgia, on March 16, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89–7875 Filed 4–3–89; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 73

**[Airspace Docket No. 89–AWA–11]**

## Revocation of Prohibited Areas P–66A and P–66B; Rancho del Cielo, Goleta, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revokes Prohibited Areas P–66A and P–66B near Santa Barbara, CA. The United States Secret Service has determined that these areas are no longer required. This action restores previously prohibited airspace to public use.

**EFFECTIVE DATE:** 0901 u.t.c., June 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Betty Harrison, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

### The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) revokes Prohibited Areas P–66A and P–66B near Santa Barbara, CA. The Secret Service has notified the FAA that restrictions are no longer required at this location for national welfare or security purposes. Because this action restores previously prohibited airspace to public use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.93 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 73

Aviation safety, Prohibited areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

### § 73.93 [Amended]

2. Section 73.93 is amended as follows:

P-66A Rancho del Cielo, Goleta, CA [Removed]

P-66B Rancho del Cielo, Goleta, CA [Removed]

Issued in Washington, DC, on March 28, 1989.

Richard Huff,

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 89-7878 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1206

RIN 2700-AA74

### Availability of Agency Records to Members of the Public

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This action amends 14 CFR Part 1206, "Availability of Agency Records to Members of the Public," by adding two new definitions to § 1206.101 and by adding a new § 1206.610 to implement Executive Order 12600, dated June 23, 1987. NASA is establishing formal notice procedures to notify submitters of commercial information in the event NASA receives a request for such information pursuant to the Freedom of Information Act, 5 U.S.C. 552 *et seq.* This rule is consistent with NASA's long-standing policy and practice with regard to providing notice to submitters of information.

**EFFECTIVE DATE:** April 4, 1989.

**ADDRESS:** Freedom of Information Act Officer, Code LN, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Riep, 202/453-2939, or Pamela J. von Soosten, 202/453-2439.

**SUPPLEMENTARY INFORMATION:** NASA published its proposed rule with comments invited in the **Federal Register** on November 30, 1988 (53 FR 48276).

NASA received one comment from an association of journalists. The Executive Order requires agencies to provide notice to a submitter, and upon receiving notice, to "afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure" of information within the scope of a Freedom of Information Act request. NASA's rule allows the submitter 10 working days to respond to this notice. The comment suggested that if NASA allows the submitter 10 working days to respond, NASA will be unable to meet its statutory obligation to respond to the FOIA requester within 10 working days. NASA has left the 10-day submitter response period the same as in its proposed rule. The Executive Order requires submitters be given a reasonable period in which to provide their objections. Moreover, if NASA cannot answer a FOIA request within the statutory time period, NASA does provide an interim response, requesting additional time, which satisfies the statutory requirement.

Upon internal review, NASA has determined that the following changes to § 1206.610 of the proposed rule are necessary for purposes of clarity:

(1) In paragraph (b), in the third sentence the word "information" should be replaced with "document that contains the information"; and

(2) In paragraph (c), the words "trade secrets, or commercial or financial information that is confidential or privileged", should be replaced with "commercial information."

The National Aeronautics and Space Administration has determined that this rule does not constitute a major rule for purposes of Executive Order 12291, and it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 1206

Freedom of information, Information.

For reasons set out in the Preamble, 14 CFR Part 1206 is amended as follows:

## PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

1. The authority citation for Part 1206 continues to read as follows:

**Authority:** Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93-504, 88 Stat. 1561, Pub. L. 99-507, unless otherwise noted; the Privacy Act of 1974, 5 U.S.C. 552a.

2. The Table of Contents for Subpart 6 is to be revised to read as follows:

### Subpart 6—Procedures



3. Section 1206.101 is amended by adding paragraphs (p) and (q) to read as follows:

**§ 1206.101 Definitions.**

* * * * *

(p) The term "commercial information" means, for the purpose of applying the notice requirements of § 1206.610, information provided by a submitter and in the possession of the National Aeronautics and Space Administration, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term "submitter" means a person or entity that is the source of commercial information in the possession of the National Aeronautics and Space Administration. The term "submitter" includes but is not limited to, corporations, state governments, and foreign governments. It does not include other federal government agencies or departments.

4. Section 1206.610 is added to read as follows:

**§ 1206.610 Notice to submitters of commercial information.**

(a) *General policy.* Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, the National Aeronautics and Space Administration shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) *Notice of submitters.* Except as provided in paragraph (g) or (h) of this section, the agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the agency

shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the agency provides notice pursuant to this section, the agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) *When notice is required.* The agency shall provide a submitter with notice of a request whenever the information is subject to an understanding of confidentiality between the agency and the submitters, or the agency has reason to believe that the information constitutes commercial information.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the agency shall afford a submitter a reasonable period within which to provide the agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the agency does not receive a response from the submitter within this period, the agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. Whenever the agency decides to disclose commercial information over the objection of a submitter, the agency shall forward to the submitter a written statement which shall include:

(1) A brief explanation as to why the agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded a reasonable number of working days prior to the date specified in paragraph (e)(3) of this section. A copy of this statement shall be forwarded to the requester at the same time, unless the description required by paragraph (e)(2) of this section would constitute a premature release, in which case the description shall be appropriately redacted and the requester so advised.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the agency shall promptly notify the submitter. Whenever a submitter brings suit against the agency in order to prevent disclosure of commercial information, the agency shall promptly notify the requester.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The information has been published or otherwise made available to the public;

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(3) The submitter has received notice of a previous FOIA request which encompassed the information requested in the later request, and the agency intends to withhold information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter, (i) the submitter reviewed its information in anticipation of future requests pursuant to the FOIA, (ii) provided the agency a statement of its objections to disclosure consistent with that described in paragraph (d) of this section, and (iii) the agency intends to release information consistent with the submitter's objections; or

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(1) The agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification;

(2) Absent any response to the published notice, the agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(3) If the submitter expressed the anticipated objections, the agency would uphold those objections.

This exemption shall be used only with the approval of the Chief Counsel of the Field Installation, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for responding to the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

James C. Fletcher,

*Administrator.*

March 24, 1989.

[FR Doc. 89-7890 Filed 4-3-89; 8:45 am]

BILLING CODE 7510-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1601

### Handling of Employment Discrimination Charges; 706 Agencies

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission amends its regulations designating certain State and Local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Vermont Human Rights Commission as a 706 Agency.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Valentina Jackson, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, State and Local Branch, 2401 E Street, NW., Washington, DC 20507, Telephone 202-634-6806.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 29 CFR Part 1601**

Administrative practice and procedure, Equal Employment Opportunity, Intergovernmental relations.

**PART 1601—[AMENDED]**

1. The authority citation for Part 1601 continues to read as follows:

**Authority:** Sections 709, 713, 78 Statutes 263, 265; 42 U.S.C. 2000e-8, 2000e-12.

**§ 1601.74 [Amended]**

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by adding in alphabetical order, the Vermont Human Rights Commission.

Signed in Washington, DC this 29th day of March 1989.

For the Commission.

**Leonora Guarraia,**

*Acting Director, Office of Program Operations.*

[FR Doc. 89-7931 Filed 4-3-89; 8:45 am]

BILLING CODE 6570-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 2610 and 2622

### Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment notifies the public of a change in the interest rate applicable to late premium and employer liability underpayments and overpayments beginning April 1, 1989. The interest rate is established by the Internal Revenue Service and is computed quarterly. This amendment is needed to notify pension plan administrators of the new interest rate.

**EFFECTIVE DATE:** April 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone (202) 778-8850 ((202) 778-8859 for TTY and TTD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** As part of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.

Section 6601(a) of the Code imposes interest on the underpayment of taxes at the "underpayment rate established under section 6621". Section 6621(a)(2) prescribes this rate: the sum of the short-term Federal rate (average interest rate on Federal securities with a maturity of three years or less) plus three percentage points. This rate is computed quarterly by the Internal Revenue Service.

On February 24, 1989, the Internal Revenue Service announced that for the calendar beginning April 1, 1989, the interest charged on the underpayment of taxes will be at the rate of 12 percent. Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth this rate for the period beginning on April 1, 1989. This rate will be in effect for at least the three-month period ending on June 30, 1989, and will continue in effect after that time if the Internal Revenue Service, in its next quarterly review, determines that no change is needed.

The appendices to 29 CFR Part 2610 and 29 CFR Part 2622 do not prescribe the interest rates under these regulations; the rates prescribed by those parts are the rates under section 6601(a) of the Code. The appendices merely collect and republish the rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that neither of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 2610*

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

*29 CFR Part 2622*

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, Appendix A to Part 2610 and Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

## PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix A to Part 2610 is amended by revising the October 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix A—Late Payment Interest Rates**

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

| From | Through | Interest rate (percent) |
|---|---|---|
| * | * | * |
| October 1, 1988.. | March 31, 1989..... | 11 |
| April 1, 1989..... | June 30, 1989..... | 12 |

## PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for Part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362-1364, 1367-68, as amended by secs. 9312, 9313, Pub. L. 100-203, 101 Stat. 1330.

4. Appendix A to Part 2622 is amended by revising the October 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix A—Late Payment and Overpayment Interest Rates**

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

| From | Through | Interest rate (percent) |
|---|---|---|
| * * * * | * | |
| October 1, 1988.. | March 31, 1989..... | 11 |
| April 1, 1989..... | June 30, 1989..... | 12 |

Issued in Washington, DC, the 30th day of March, 1989.

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 89-7930 Filed 4-3-89; 8:45 am]

BILLING CODE 7708-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 806b

**[Air Force Reg. 12-35]**

### Air Force Privacy Act Program

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is publishing as a final rule two new Privacy Act exemption rules and amending an existing exemption rule by re-naming the record system. The two new exemption rules will exempt two existing record systems, subject to the Privacy Act, from access and therefore permit denial of individual requests to gain access to certian categories of records maintained in the systems pertaining to the individual.

**EFFECTIVE DATE:** April 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda G. Adams, Information Management Division, Directorate of Information Management and Administration, Office of the Administrative Assistant, Secretary of the Air Force, The Pentagon, Washington, D.C. 20330-1000 or telephone: 202-694-3488, Autovon 224-3488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force published, as a proposed rule for public comment, two new specific exemption rules to exempt certain provisions of the Privacy Act from applying to two systems of records. Specifically, from the access provisions of the Privacy Act of 1974, 5 U.S.C. 552a(d). The proposed rulemaking was published in the **Federal Register** on June 28, 1988 (53 FR 24322) and November 14, 1988 (53 FR 45776). No comments were received and therefore the proposed Privacy Act exemption rules are hereby adopted as final.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 28, 1989.

**List of Subjects in 32 CFR Part 806b**

Privacy Act Exemptions.

For reasons set forth in the preamble, Title 32, Chapter VII, Subchapter A, Part 806b, Subpart E of the Code of Federal Regulations is amended as follows:

**PART 806b—[AMENDED]**

1. The authority citation for Part 806b continues to read as follows:

Authority: Pub. L. 93-579, 5 U.S.C. 552a, 32 CFR Part 286a.

2. Section 806b.13 is amended by revising paragraph (a)(3) and adding new paragraphs (b)(19) and (b)(20) as follows:

**Subpart E—Privacy Act Exemptions**

**§ 806b.13 General and specific exemptions.**

(a) *General exemptions.* * * *

(3) Security Police Automated System (SPAS), F125 AF SP E.

* * * * * *

(b) *Specific exemptions.* * * *

(19) *Registrar Records (F053 AFA D)*—(i) *Exemption.* Parts of this system of records are exempt from 5 U.S.C. 552a(d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k) (5).

(iii) *Reasons.* To encourage candor and maintain the integrity of investigatory material, evaluations, or any comments or personal information received or solicited, as required, from third parties under an expressed or implied promise of confidentiality and compiled solely for the purpose and use of determining suitability, eligibility, or qualifications for military service of USAF Academy applicants and those enrolled.

(2) *Application for Appointment and Extended Active Duty Files (F035 AF MP R)*—(i) *Exception.* Parts of this system of records are exempt from 5 U.S.C. 552a(d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k) (5).

(iii) *Reasons.* To protect the identity of confidential sources who furnish information necessary to make determinations about the qualification, eligibility, and suitability of health care professionals who apply for Reserve of the Air Force appointment or interservice transfer to the Air Force.

[FR Doc. 89-7766 Filed 4-3-89; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900-AC41**

### Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program; Correction

**AGENCY:** Department of Veterans Affairs.[1]

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Veterans Affairs (VA) is correcting previously published information concerning implementation of provisions of the Department of Defense Authorization Act, 1985.

**EFFECTIVE DATE:** These final rules were retroactively effective October 19, 1984, the date upon which the program authorized under Chapter 30, Title 38, United States Code, became effective.

**FOR FURTHER INFORMATION CONTACT:** Doneld R. Howell, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-4244.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 30, 1989 (54 FR 4282), VA published its regulations to implement statutory provisions allowing an otherwise eligible veteran to elect payment at the rates provided under Chapter 30 for training which the veteran is pursuing as a part of a vocational rehabilitation program. In that final regulation, a reference was erroneously stated. VA hereby corrects that error.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

Dated: March 29, 1989.

**Donald R. Howell,**

*Acting Chief, Directives Management Division.*

38 CFR part 21 is amended as set forth below:

## PART 21—(AMENDED)

**§ 21.334 [Amended]**

1. In § 21.334(a), remove the word "§ 21.70509(a)" and insert in its place, the word "§ 21.7050(a)".

[FR Doc. 89-7895 Filed 4-3-89; 8:45 am]

BILLING CODE 6320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL-3547-9]**

### Approval and Promulgation of Implementation Plans; Wisconsin

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Notice of direct final rulemaking.

**SUMMARY:** USEPA is approving a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for sulfur dioxide ($SO_2$). This revision involves Wisconsin Administrative Code, Natural Resources (NR) § 418.06, the $SO_2$ emission limits of which are applicable to the Badger Paper Mills facility located in the City of Peshtigo, Marinette County, Wisconsin.

**DATES:** This action will be effective June 5, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the SIP revision and technical support documents are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

A copy of today's revision to the Wisconsin SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20408.

Adverse comments on this proposed rule, if any, should be addressed to: (Please submit an original and three copies, if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:** On January 15, 1985, the Wisconsin Department of Natural Resources (WDNR) submitted NR 418.06. NR 418.06 is an $SO_2$ rule which is only applicable to the Badger Paper Mills facility, located in the City of Peshtigo, Marinette County, Wisconsin.[1] In a June 28, 1985, letter USEPA notified the WDNR that its January 15, 1985, submittal was approvable (1) if certain rule modifications were made (i.e, revision of the boiler limit and the other sources limit, establishment of an evaporator building roof vent limit, and elimination of the alternative control options) and (2) if an acceptable compliance plan (test methods and procedures) was submitted.

The State withdrew NR 418.06 to make the required modifications. On December 1, 1987, the WDNR submitted a revised NR 418.06.

### Description of the Rules and USEPA's Evaluation

*Section NR 418.06 (1).*

The following emission limits are set forth in this Subsection:

Liquid fossil fuel and natural gas fired steam generating boilers with an emission point above ground of less than 55 feet—0.520 pounds of $SO_2$ per million British Thermal Units (lbs/MMBTU).

Liquid fossil fuel, natural gas, and wood refuse fired steam generating boilers with an emission point above ground of more than 149 feet—0.520 lbs/MMBTU.

Spent sulfite liquid incinerators and evaporation plants emitting from a point 197 feet or more above ground—1,682.00 pounds of $SO_2$ per hour and 35,184.00 pounds of $SO_2$ in any 24 hours.

Pulp digesters emitting from a point 100 feet or more above ground—300.00 pounds of $SO_2$ in any 3 hours and 1,365.00 pounds of $SO_2$ in any 24 hours.

Air contact evaporators emitting from a point 35 feet or more above ground—33.02 pounds of $SO_2$ per hour and 686.88 pounds of $SO_2$ in any 24 hours.

Evaporator buildings emitting from a point 87 feet or more above ground—6.10 pounds of $SO_2$ per hour.

All other sources—total of 0.72 pounds of $SO_2$ per hour.

Wisconsin submitted a dispersion modeling analysis (based on the Industrial Source Complex model) which demonstrated that Wisconsin's plan for Peshtigo assures the attainment and maintenance of the $SO_2$ NAAQS. This modeling analysis is based on USEPA's modeling guidelines which were in place at the time the analysis was performed (i.e., "Guideline on Air Quality Models," April 1978 and "Regional Workshops on Air Quality Modeling: A Summary Report," April 1981). Since that time, revisions to the modeling guidelines have been promulgated "Guideline on Air Quality Models (Revised)," July 1986 (September 9, 1986) and "Supplement A to the Guideline on Air Quality Models (Revised)," July 1987 (January 6, 1988). Because the modeling was initiated prior to the latest revision of the guidelines, USEPA accepts the analysis as it stands. USEPA is approving these emission limits.

*Section NR 418.06 (2)*

This Subsection includes various compliance dates for each of the above emission limits (except for the "all other sources" limit where immediate compliance was required). The final compliance date is November 20, 1986. USEPA is approving these dates. (Note: because all dates are in the past, an assessment of expeditiousness is moot.)

*Section NR 418.06(3)*

This subsection requires Badger Paper to prepare and maintain a compliance demonstration plan to assure continuous compliance with the emission limits in section NR 418.06(1). USEPA is approving this requirement. However, by approving this provision, USEPA is only approving the State requirement to establish a compliance demonstration plan and is not approving the specific plan itself. Further, Wisconsin has not submitted its Badger Paper compliance demonstration plan as a revision to its SIP.

Instead, the WDNR notified USEPA on May 28, 1987, that "* * * a source can be required to perform a compliance

[1] In an October 9, 1985, **Federal Register** notice (50 FR 41139), the City of Peshtigo in Marinette County was designated from attainment to primary and secondary nonattainment for $SO_2$ pursuant to Section 107(e) of the Clean Air Act, 42 U.S.C. § 7407(e). See 40 CFR 81.350.

stack test regardless of a source's compliance status as determined by the source site specific compliance plan * * * ." The current federally approved SIP includes a stack test at section NR 439 (formerly NR 154.06), which follows the methods required or approved by USEPA. Even though Badger Paper and WDNR have developed a site specific compliance plan for Badger Paper Mills (pursuant to NR 418.06(3)), this plan was not submitted by the State and will not be included in the SIP. The only compliance test method in the SIP applicable to Badger Paper Mills will remain a stack test. This method is acceptable to USEPA; and, thus, USEPA is approving this Subsection.

*Section NR 418.06(4)*

This subsection requires maintenance of existing stack heights. USEPA is approving this Subsection.

However, USEPA notes that the Wisconsin's Peshtigo plan is based on two stack modifications. USEPA has reviewed these in relationship to its July 8, 1985 (50 FR 27892), Stack Height Regulations.[2] One modification is that the evaporator plant stack is being increased from 106 feet to 197 feet. This new height is less than the *de minimis* 213-foot level in USEPA's July 8, 1985, stack height rules and is, therefore, creditable.

The two 80 feet digester blow stacks are being replaced by one 100-foot stack. This height too is less than 213 feet and is creditable. As to the merged stack issue, the new 100-foot stack has $SO_2$ pollution control equipment installed and has reduced emissions. The merging is, therefore, creditable under USEPA's July 8, 1985, regulations. USEPA is approving credit for these changes.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective June 5, 1989. However, if we receive notice by May 4, 1989 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental Protection, Air pollution control, Sulfur dioxides, Intergovernmental Offices, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Date: March 20, 1989.

**Frank M. Covington,**

*Acting Regional Administrator.*

**Subpart YY—Wisconsin**

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding paragraph (c)(52) to read as follows:

**§ 52.2570 Identification of plan.**

* * * * *

(c) * * *

(52) On December 1, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted NR 418.06. NR 418.06 is an $SO_2$ rule which is only applicable to the Badger Paper Mills facility, located in the City of Peshtigo, Marinette County, Wisconsin.

(i) *Incorporation by reference.* (A) Natural Resources (NR) 418.06, Peshtigo RACT sulfur limitations, as published in the (Wisconsin) Register, October 1987, No. 382 at page 74, effective November 1, 1987.

[FR Doc. 89–7796 Filed 4–3–89; 8:45 am]

BILLING CODE 6560–50–M

[2] USEPA's July 8, 1985, stack height regulations apply to stacks (and sources) which came into existence, and dispersion techniques implemented on or after December 31, 1970. Stack height credit for the purpose of establishing an emission limitation is generally restricted to GEP, i.e., the greater of 213 feet [65 meters (m)] or the GEP formula height (40 CFR 51.100(ii)). Credit for merged stacks is generally prohibited with the following four exceptions:

(1) where total plant wide allowable $SO_2$ emissions do not exceed 5000 tons per year,

(2) where the stack was originally designed and constructed with merged gas streams,

(3) where such merging was before July 8, 1985, and was part of a change in operation that: (i) included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and (ii) did not result in an increase in the emission limitation or (if no limit was in existence prior to merging) in the actual emissions, or

(4) where such merging was after July 8, 1985, and was part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions for the pollutant affected by the change in operation.

Certain provisions of these rules were remanded to USEPA in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). These are: grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height [40 CFR 51.100(kk)(2)]; dispersion credit for sources originally designed and constructed with merged or multi-flue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula [40 CFR 51.100(ii)(2)]. These remanded provisions are not applicable to today's proposed rulemaking.

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Public Land Order 6714**

**[CA-940-09-4214-10; CACA-18045]**

**Modification of Executive Order No. 6206; California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order modifies an Executive order insofar as it affects 2,654.62 acres of public lands withdrawn for the protection of the water supply of the city of Los Angeles. This action will open the lands to surface entry to allow a proposed exchange of public lands around the Haiwee Reservoir for lands owned by the city of Los Angeles around the Upper Franklin Reservoir for purposes of the Santa Monica Mountains National Recreation Area. The lands remain closed to all other forms of appropriation under the public land laws, including the nonmetalliferous mining laws. All of the lands have been and will remain open to metalliferous mining and mineral leasing.

**EFFECTIVE DATE:** April 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4815.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 6206 dated July 16, 1933, is hereby modified insofar as it affects the following described lands to permit an exchange of lands pursuant to the Act of October 30, 1984, Pub. L. 98–572:

Mount Diablo Meridian

T. 19 S., R. 37 E.,
Sec. 34, SW¼.
T. 20 S., R. 37 E.,
Sec. 3, lot 5 (formerly described as E½ lot 2 of NW¼);
Sec. 4, E½SE¼;
Sec. 10, W½SW¼;
Sec. 15, SE¼NW¼, SW¼SW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 22, NW¼NE¼ and W½W½;
Sec. 26, lots 6 to 8, inclusive, SW¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 27, W½W½;
Sec. 34, SW¼NE¼, NE¼SW¼, and W½SE¼;
Sec. 35, W½NE¼ and NW¼.
T. 21 S., R. 37 E.,
Sec. 1, lot 1, SW¼NW¼, and W½SW¼ (formerly described as W½W½);
Sec. 2, lot 3 (formerly described as E½ lot 2 of NW¼), lots 7 to 9, inclusive, and SE¼NE¼ (formerly described as NE¼), lots 10 and 11 (formerly described as N½SE¼), lot 12 (formerly described as NE¼SW¼), lot 15 (formerly described as N½SW¼SE¼, SE¼SW¼SE¼, and E½SW¼SW¼SE¼), N½SE¼SW¼ and SE¼SE¼;
Sec. 11, lots 4 and 5 (formerly described as S½NE¼), lots 6 and 7 (formerly described as N½SE¼), lot 12 (formerly described as E½SE¼SE¼NW¼), lot 13 (formerly described as E½NE¼ NE¼SW¼ and SE¼NE¼SW¼), NE¼NE¼, E½NW¼NE¼, E½NW¼ NW¼NE¼, E½SW¼NW¼NE¼, SW¼SW¼NW¼NE¼, E½SE¼SW¼, and S½SE¼;
Sec. 14, lot 11 (formerly described as E½SE¼NW¼ and E½SW¼SE¼NW¼) and E½NE¼NW¼.

The areas described aggregate 2,654.62 acres in Inyo County.

2. Effective immediately, the lands described in paragraph 1 will be opened to exchange in accordance with Pub. L. 98–572, 98 Stat. 2946, subject to valid existing rights, the provisions of existing withdrawals, and the provisions and requirements of applicable law.

Earl Gjelde,
*Under Secretary of the Interior.*
March 29, 1989.
[FR Doc. 89–7921 Filed 4–3–89; 8:45 am]
BILLING CODE 4310–40–M

## 43 CFR Public Land Order 6715

[MT–930–09–4214–10; MTM 41507]

## Partial Revocation of Executive Order No. 3053; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes an Executive order insofar as it affects approximately 58.63 acres of National Forest System lands withdrawn for use as a game preserve. The lands are no longer needed for that purpose. The revocation is needed to permit consummation of an exchange. This action will open the lands to surface entry and mining of nonmetalliferous minerals. The lands have been and will remain open to mining of metalliferous minerals and mineral leasing.

**EFFECTIVE DATE:** April 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 3053 which withdrew public lands (now National Forest System lands) in aid of legislation to insure their use as a game preserve is hereby revoked insofar as it affects the following lands:

Principal Meridian

T. 9 S., R. 9 E.,
Sec., 8, that portion of lot 7 which when resurveyed will be part of tract 39.
Sec. 9, that portion of lot 2 and the NW¼NW¼ which when resurveyed will be part of tract 38 and that portion of lots 7 and 8 which when resurveyed will be part of tract 39.
Sec. 17, that portion of lots 1 and 4 which when resurveyed will be part of tract 39.

The areas described aggregate approximately 58.63 acres in Park County.

2. At 9 a.m. on April 19, 1989, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry for nonmetalliferous minerals under the United States mining laws. Appropriation of lands described in this order under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Earl Gjelde,
*Under Secretary of the Interior.*
March 29, 1989.
[FR Doc. 89–7923 Filed 4–3–89; 8:45 am]
BILLING CODE 4310–DN–M

## 43 CFR Public Land Order 6716

[ID–943–09–4214–10; I–22924]

## Revocation of Executive Order No. 4415 and Public Land Order No. 552; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes one Executive order and one public land order which withdrew 0.52 acre of public lands withdrawn for use by the Forest Service as an administrative site within the townsite of Ketchum, Idaho. The withdrawal is being revoked to permit consummation of a pending Bureau of Land Management exchange. This action will open 0.52 acre to surface entry and mining. All of the lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** April 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 4415 and Public Land Order No. 552, which withdrew the following described public lands for a Forest Service administrative site, are hereby revoked in their entirety:

Boise Meridian

T. 4 N., R. 18 E.,
Sec. 18, Lot 7, Block 39, Ketchum Townsite; Lots 6, 7, and 8, Block 40, Ketchum Townsite.

The areas described aggregate 0.52 acre in Blaine County.

2. At 9:00 a.m. on April 19, 1989, the lands described in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on April 19, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on April 19, 1989, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**Earl Gjelde,**

*Under Secretary of the Interior.*

March 29, 1989.

[FR Doc. 89-7922 Filed 4-3-89; 8:45 am]

BILLING CODE 4310-GG-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-205; RM-5743, RM-5843, and RM-5916]**

### Radio Broadcasting Services; Quincy and Marianna, FL; and Albany, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants the request of Capital Broadcasting, Inc. to substitute Channel 268C2 for Channel 269A at Quincy, Florida, and modify its license for Station WIQI(FM) to specify operation on Channel 268C2. In denying the mutually exclusive request of Platinum Broadcasting, Ltd. to substitute Channel 268C2 for Channel 269A at Albany, Georgia, the Commission found that the public interest would be better served by upgrading the Quincy's Station WIQI(FM) because it would serve a greater number of persons than would an upgraded Albany station. Neither of the two proposals would have provided (1) the first aural service to its respective community, (2) the second full-time aural service, or (3) the first local service. The Commission dismissed a request to upgrade Station WJAQ(FM) at Marianna, Florida, which had also been mutually exclusive with the Quincy request. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-205, adopted February 18, 1989, and released March 30, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida, by removing Channel 269A at Quincy and adding Channel 268C2 at Quincy.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7958 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 87-414; RM-5795]**

### Television Broadcasting Services, Junction City, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes UHF Channel 31 for VHF Channel 6 at Junction City, Kansas, in response to a petition filed by Chronicle Broadcasting of Omaha, Inc. The substitution at Junction City will provide Station WOWT(TV), Channel 6, Omaha, Nebraska, an opportunity to relocate its transmitter site to expand and improve its service area. The coordinates for Channel 31 at Junction City are 39-01-42 and 96-49-54. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-414, adopted March 7, 1989, and released March 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. In § 73.606(b), the Television Table of Allotments under Kansas is amended by removing Channel 6 and adding Channel 31 at Junction City.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7957 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 54, No. 63
Tuesday, April 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 987

[Docket No. FV-89-032]

### Dates Produced or Packed in Riverside County, CA; Proposed Increase in Expenses for 1987-88 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize an increase in expenses for the California Date Administrative Committee (committee) established under Marketing Order 987 for the 1987-88 crop year. The expenses would be increased from $411,267 to $448,019. The $36,752 increase is needed to cover advertising and promotion expenditures in excess of those authorized in the committee's 1987-88 budget.

**DATE:** Comments must be received by April 14, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-So., Washington, DC 20090-6456, telephone (202) 475-3862.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

A final rule establishing expenses in the amount of $386,267 for the 1987-88 crop year was published in the **Federal Register** on January 7, 1988 (53 FR 401). The committee's expenses were increased by $25,000 to $411,267 on May 26, 1988 (53 FR 18973). Such expenses included $378,253 for advertising and promotion. The committee also had $55,000 in unexpended advertising funds from the 1986-87 crop year.

The committee's 1987-88 financial audit reflects 1987-88 market promotion expenditures of $470,005. After deducting the $55,000 which was budgeted in the 1986-87 crop year, the committee had 1987-88 promotion expenditures of $415,005 which exceeds 1987-88 authorized expenditures by $36,752.

At its March 2 meeting, the committee unanimously recommended that its 1987-88 expenses be increased by $36,752 to cover the expenditures in excess of those approved by the Department. Authorized expenses for the 1987-88 crop year would be increased from $411,267 to $448,019.

The over-expenditure was a result of the committee operating on a cash basis of accounting which only accounts for expenses as they are paid and not for financial obligations yet to be met. This combined with the fact that the committee's advertising agency did not provide a detailed accounting of each individual promotion activity (consumer advertising, food service, bakery, etc.) made it difficult for the committee to accurately determine its financial position each month.

The committee's auditor has suggested various changes in accounting procedures which should make the committee more aware of its financial situation at any given time. The Department has also suggested that the committee request more detailed invoices, separated by expenditure category, from its advertising agency. The committee is implementing these suggestions which should prevent future overexpenditures.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. Expenditures in excess of those included in the committee's 1987-88 budget need to be approved by the Department to conform to marketing order requirements.

**List of Subjects in 7 CFR Part 987**

Marketing agreement and order, dates, California.

For reasons set forth in the preamble, it is proposed that § 987.332 be amended as follows:

### PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 987.332 is amended as follows:

**§ 987.332 [Amended]**

Section 987.332 is amended by changing "$411,267" to "$448,019".

Dated: March 30, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-7927 Filed 4-3-89; 8:45 am]

BILLING CODE 3410-02-M

### 7 CFR Part 1049

[DA-89-007]

### Milk in the Indiana Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of proceeding on proposed suspension of rules.

**SUMMARY:** This action terminates a proceeding that was initiated to consider a proposal to suspend for the months of March through May 1989 a portion of the Indiana Federal milk marketing order. The suspension was requested by a cooperative association in order to maintain pool status for one or more distributing plants associated with the market. The proposed suspension would have made inoperative the requirement that a pool distributing plant dispose of as Class I route disposition not less than 50 percent of certain specified Grade A milk receipts at such plant during the month.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-4829.

**SUPPLEMENTARY INFORMATION:** *Prior document in this proceeding—Notice of Proposed Suspension:* Issued February 21, 1989; published February 24, 1989 (54 FR 7948).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This proceeding was initiated by a notice of proposed suspension published in the **Federal Register** on February 24, 1989 (54 FR 7948) concerning a proposed suspension of certain pooling provisions of the Indiana Federal milk order. Interested persons were invited to comment on the proposal in writing by March 10, 1989.

### Statement of Consideration

The proposed suspension would have made inoperative the requirement that a pool distributing plant dispose of as Class I route disposition not less than 50 percent of certain specified Grade A milk receipts at such plant during the month. The proposal was submitted by National Farmers Organization, Inc. (NFO), a cooperative association of producers.

NFO, in support of its proposal, said that without this suspension, it is likely that one or more longtime distributing pool plants under the Indiana order will not qualify for pool status during the months of March, April, and May 1989. This, they said, could jeopardize the association of the plants' producer milk supplies with the Indiana pool. The 50-percent requirement would be difficult to meet because the volume of ice cream and other Class II products at distributing plants increases in the spring months of the year.

NFO stated that in prior years, the qualification of these plants had been maintained by other supply organizations through the diversion of producer milk from other distributing plants to these distributing plants. The diverted volume of milk, said NFO, was qualified for pooling by association with the plant from which diverted and, therefore, the qualifications of the recipient plants were retained. NFO maintains that such qualification for the spring months of 1989 is neither economic nor realistic because NFO does not have the flexibility to qualify milk at one plant for diversion to another plant without extraordinary and uneconomic milk movements.

NFO also stated that they will be requesting that the qualification provisions of the order be amended. This, they said, is because the Indiana order pool plant provisions are more stringent than several nearby orders and because the ratio of Class II uses to total uses at pool plants in Order 49 is relatively higher than in these nearby orders.

The Milk Foundation of Indiana (MFI) sent a letter in support of the proposed suspension. MFI is composed of seven pool distributing plants associated with the Indiana order.

MFI stated that four of the handlers have experienced difficulty meeting the 50-percent route disposition requirement. These four plants, said MFI, have been able to meet this pooling requirement for many months only by receiving diverted milk from a cooperative association. MFI says that receiving diverted milk involves much unproductive milk handling practices.

Three comments in support of the suspension and six comments in opposition to the suspension were received.

New Paris Creamery Co., Inc. (New Paris), said that they had recently lost several large fluid milk customers and that this loss would make it difficult to qualify under the 50-percent pooling standard.

New Paris said that they will have two options to remain qualified if the pooling provision is not suspended. They said that they could reduce their Class II business which could lead to employee layoffs and a permanent loss of business. The other option, they said, would be to move some of their producer milk to other pool plants and receive diversions from other distributing plants which would result in uneconomical shipments of milk.

Miller Dairy (member of MFI) also supported the suspension, indicating that they have only been able to keep their plants pooled by receiving diverted milk from cooperative associations. They said that as new products come on the market, and with the increased interest in ice cream and other frozen desserts, it is more and more necessary to consider Class II as part of the pooling requirement.

MFI in its comments pointed out that milk production in this market has been increasing at a rate higher than in most markets. MFI maintains that additional milk supplies will not be associated with this market because of the suspension. MFI contends that several distributing plant members will have to continue receiving diverted milk, which in their view is an uneconomical movement of milk, if the pooling provision is not suspended.

The six comments is opposition to the proposed suspension were filed by Dean Foods Company (Dean), The Kroger Co. (Kroger), Allen Dairy Products, Inc. (Allen), Associated Milk Producers, Inc.—Morning Glory Farms (AMPI), Milk Marketing Inc. (MMI), and Michigan Milk Producers Association. The four cooperatives, Allen, AMPI, MMI, and MMPA, collectively represent over two-thirds of the market's producers.

All six organizations stated that the suspension of the 50-percent pooling requirement would result in the association of unneeded milk supplies on this market and, consequently, lower blend prices.

Kroger further said that this 50-percent requirement is justifiable since it assists the order in accomplishing one of its primary goals which is to insure an adequate supply of Grade A milk for fluid use. Kroger stated that at this time there are adequate supplies of milk within the market and that pooling provisions should not be relaxed to allow producers to "ride the pool".

AMPI stated additionally that the Indiana order is a deficit market and that is why the order provisions were deliberately constructed to provide for stringent qualification provisions. AMPI stated that NFO has historically been "pool riders" and NFO does not provide any balancing services to the market. AMPI stated that suspension of this provision would increase milk supplies in the flush months and therefore would increase the need for more milk balancing and further deteriorate the pay price relationship between milk

supplies in the Ohio Valley and Indiana markets.

MMI further noted that the suspension of the 50-percent requirement would send a signal to pool distributing plants to produce more Class II and Class III products with the additional milk supplies. They said that during the period of June through August, the 50-percent requirement is not in effect and therefore an operator of a pool distributing plant would have six months to respond to this signal.

The Indiana market is somewhat unique among midwestern Federal order markets in that it is a deficit market. This is shown by 1987 data indicating that Indiana-produced milk that was pooled under the Indiana order amounted to only 125 percent of Class I producer milk. Put another way, Class I producer milk accounted for slightly more than 80 percent of the Indiana-produced milk pooled under the Indiana order. Accordingly, it is important that the blend price be maintained at a level that will continue to attract needed milk supplies from sources outside Indiana. Because the Indiana market is a deficit market, it has the highest average Class I use percentage of producer milk for any order in the region.

If the 50-percent pooling standard were suspended, it would be possible for additional milk supplies to be pooled, which would lower blend prices to producers. This would cause a deterioration in the relationship of blend prices between the Indiana and Ohio Valley markets, which now are competitive. This competitive relationship is important to maintaining adequate supplies of milk for the Indiana market.

Even in the spring months of March through May, the Indiana market's Class I utilization percentage remains relatively high. For those three months in 1987 and 1988, Class I use of producer milk averaged about 58 percent. Thus, a 50-percent Class I requirement for distributing plants to qualify as pool plants is appropriate.

It is readily apparent from the suspension request and the supporting comments that the purpose of the proposed suspension is to accommodate pooling milk for Class II uses. However, to do so would fail to recognize that the Class II price is not intended to encourage additional supplies of milk for Class II uses. In effect, producers are being asked to accept the possibility of lower blend prices in order to allow certain plants to increase their Class II uses.

National Farmers Organization argues in its comments that if certain distributing plants lose pool status, the value of their Class I milk will be lost to the pool. However, this is not the case. Such plants likely would be partially regulated and would have a pool obligation on their in-area Class I sales equal to the Class I price minus the blend price or be obligated to its producers for the full classified use value of their producer milk. Thus, failure to suspend as requested does not jeopardize the remuneration of Class I milk value to producers.

Finally, we would point out, as noted in several comments, that the Indiana order provides automatic pool status, in the current month for a distributing plant that met the 50-percent requirement for the preceding month. Thus, distributing plants that met the 50-percent requirement in February 1989 will have pool plant status in March. By meeting the standard in April, such plants would have pool status again for May. Thus, any adjustments by pool plants operators and/or cooperatives that may be necessary to maintain pool status for the distributing plants in question would be limited to April only.

For the foregoing reasons, the requested suspension is hereby denied and the proceeding is terminated.

**List of Subjects in 7 CFR Part 1049**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1049 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: March 29, 1989.

**Robert Melland,**

*Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.*

[FR Doc. 89–7924 Filed 4–3–89; 8:45 am]

**BILLING CODE 3410–02–M**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 71

**RIN 3150–AC41**

### Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA); Third Extension of Public Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Extension of comment period.

**SUMMARY:** On June 8, 1988 (53 FR 21550), the NRC published for public comment a proposed rule to make its transportation regulations in 10 CFR Part 71 compatible with those of the International Atomic Energy Agency (IAEA) as contained in IAEA Safety Series No. 6, Regulations for the Safe Transport of Radioactive Material, 1985 Edition. This rulemaking action, combined with a parallel action by the Department of Transportation (DOT), would make United States regulations for the safe transportation of radioactive material internationally compatible. Because it is important that the public have the opportunity to review and comment on the DOT and NRC proposed rules concurrently, NRC set its initial public comment period to expire on October 6, 1988, expecting the DOT rule to be available for publication by the end of June 1988. Publication of the DOT proposed rule has been delayed several times, and is now expected by the middle of April 1989. To achieve its goal of having some portion of the public comment period common for both rules, the NRC is extending its comment period to expire on the date 60 days after the date the DOT proposed rule is published in the **Federal Register**. When the DOT proposed rule is published, NRC will issue another notice which will include a date certain when the NRC comment period will expire.

**DATES:** The comment period has been extended and now expires 60 days after the date when the DOT proposed rule is published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received before this date.

**ADDRESSES:** Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Examine comments received at the NRC Public Document Room, 2120 L Street, NW., lower level, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301–492–3784).

Dated at Rockville, Maryland, this 28th day of March, 1989.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 89–7947 Filed 4–3–89; 8:45 am]

**BILLING CODE 7590–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88-AWP-22]**

### Proposed Revision of Vacaville, CA, Transition Area; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to proposed rule.

**SUMMARY:** This action corrects an error in the calculation of the true bearing for the Vacaville, CA, transition area.

**FOR FURTHER INFORMATION CONTACT:** Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

**SUPPLEMENTARY INFORMATION:**

History

Federal Register Document 88-AWP-22 was published on December 28, 1988, proposing to revise the transition area at Vacaville, CA (53 FR 52427). This action corrects the true bearing described to the 017° bearing (034 °T) of the Nut Tree Airport.

The FAA has determined that this proposal only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 53 FR 52427 of the Federal Register on December 28, 1988, is corrected read as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Corrected]**

2. Section 71.181 is amended to read as follows:

Vacaville, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 3-mile radius of Nut Tree Airport, CA (lat. 38°22'18" N., long. 121°57'33" W.), and within 2.5 miles each side of the Sacramento VORTAC 259° radial, extending from the 3-mile radius area to 13 miles W of the VORTAC and within 3 miles each side of the 017° bearing (034° T) of the Nut Tree Airport extending from the 3-mile radius area to 10 miles north northeast of the airport.

Issued in Los Angeles, California, on March 21, 1989.

**Jacqueline L. Smith,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 89-7877 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[File No. 851 0020]**

### American Institute of Certified Public Accountants; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the American Institute of Certified Public Accountants (AICPA) from restricting CPAs from providing professional services for a contingent fee or a disclosed commission to any person for whom the CPA is not also performing an attest service. Respondent also would be prohibited from restricting CPAs' use of referral fees that are disclosed and would be required to distribute a copy of the order and any revised ethics rules.

**DATE:** Comments must be received on or before June 5, 1989.

**ADDRESS:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael McNeely, FTC/S-3308, Washington, DC 20580. (202) 326-2904.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

List of Subjects in 16 CFR Part 13

Accountants, CPAs, Trade practices.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the American Institute of Certified Public Accountants, a corporation, hereinafter sometimes referred to as "AICPA" or proposed respondent, and it now appearing that AICPA is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* by and between AICPA, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. AICPA is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1211 Avenue of the Americas, New York, New York 10036-8775.

2. AICPA admits all of the jurisdictional facts set forth in the draft complaint here attached.

3. AICPA waives: (a) Any further procedural steps;

(b) The requirement that the Federal Trade Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the

proceeding unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Federal Trade Commission thereafter may either withdraw its acceptance of this agreement and so notify AICPA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by AICPA that the law has been violated as alleged in the attached draft complaint.

6. This agreement contemplates that, if it is accepted by the Federal Trade Commission, and if such acceptance is not subsequently withdrawn by the Federal Trade Commission pursuant to the provisions of § 2.34 of the Federal Trade Commission's Rules of Practice, the Federal Trade Commission may, without further notice to AICPA, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to AICPA's address stated in this agreement shall constitute service. AICPA waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, AICPA will be required to file one or more compliance reports showing that it has fully complied with the order. It further understands that AICPA may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

*Order*

I.

*It is ordered,* That for purposes of this order the following definitions shall apply:

A. "AICPA" means American Institute of Certified Public Accountants and its Board of Directors, Council, committees, task forces, officers, representatives, agents, employees, successors, and assigns;

B. "Attest service" means providing (1) any audit, (2) any review of a financial statement, (3) any compilation of a financial statement when the certified public accountant ("CPA") expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence, and (4) any examination of prospective financial information;

C. "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;

D. "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;

E. "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;

F. "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;

G. "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;

H. "Examination of prospective financial information" means an evaluation by a CPA of (1) a forecast or projection, (2) the support underlying the assumptions in the forecast or projection, (3) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and (4) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;

I. "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;

J. "Person" means any natural person, corporation, partnership, unincorporated association, or other entity;

K. "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;

L. "Referral fee" means compensation for recommending or referring any service of a CPA to any person;

M. "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and

N. "Trade name" means a name used to designate a business enterprise.

II.

*It is further ordered,* That AICPA, directly, indirectly, or through any person or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, advising members against, or interfering with any of the following practices by any CPA:

1. The offering or rendering of professional services for, or the receipt of, a contingent fee by a CPA, provided that the offering or rendering by a CPA for a contingent fee of professional services for, or the receipt of such a fee from, any person for whom the CPA also performs attest services may be

prohibited by the AICPA during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services;

2. The offering or rendering of professional services for, or the receipt of, a disclosed commission by a CPA, provided that the offering or rendering of professional services by a CPA for a commission for any person for whom the CPA also performs attest services may be prohibited by the AICPA during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services;

3. The payment or acceptance of any disclosed referral fee;

4. The solicitation of any potential client by any means, including direct solicitation;

5. Advertising, including, but not limited to:

(a) Any self-laudatory or comparative claim;

(b) Any testimonial or endorsement; and

(c) Any advertisement not considered by AICPA to be professionally dignified or in good taste; and

6. The use of any trade name;

*Provided* That nothing contained in this order shall prohibit AICPA from formulating, adopting, disseminating, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to solicitation, advertising or trade names, including unsubstantiated representations, that AICPA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act;

B. Taking or threatening to take formal or informal disciplinary action, or conducting any investigation or inquiry, applying standards in violation of this order;

C. Adopting or maintaining any rule, regulation, interpretation, ethical ruling, concept, policy, or course of conduct that is in violation of this order;

D. Inducing, urging, encouraging, or assisting any association of accountants to engage in any act that would violate this order if done by AICPA provided, however, that nothing in this order shall prohibit AICPA from soliciting action by any federal, state or local governmental entity; and

E. Applying or interpreting any other language contained in the Code of Professional Conduct or its successors in a manner that would violate this order;

*Provided* That this order shall not prohibit AICPA from:

(a) Suspending membership in AICPA if:

i. A member's certificate as a CPA or license or permit to practice as such or to practice public accounting is suspended as a disciplinary measure by any governmental entity;

ii. A member's registration as an investment adviser is suspended by the SEC;

iii. A member's registration as a broker-dealer is suspended by the SEC or by any state agency acting pursuant to any applicable state law or regulation relating to the issuance, registration, purchase or sale of securities; or

iv. A member is suspended from practicing before the IRS,

but any such suspension by AICPA shall terminate upon reinstatement of any such certificate, license, permit, registration, or authorization to practice; or

(b) Terminating membership in AICPA if:

i. A member's certificate as a CPA or license or permit to practice as such or to practice public accounting is revoked, withdrawn or cancelled as a disciplinary measure by any governmental entity;

ii. A member's registration as an investment adviser is revoked by the SEC;

iii. A member's registration as a broker-dealer is revoked by the SEC or by any state agency acting pursuant to any applicable state law or regulation relating to the issuance, registration, purchase or sale of securities;

iv. A member is subject to a final judgment of conviction for criminal fraud or for a crime punishable by imprisonment for more than one year; or

v. A member is disbarred from practicing before the IRS.

III.

*It is further ordered* That AICPA shall:

A. Distribute a copy of this order and an announcement in the form shown in Appendix A, within thirty (30) days after this order becomes final, to all personnel, agents, or representatives of AICPA having responsibilities with respect to the subject matter of this order and secure from each such person a signed statement acknowledging receipt of this order and said announcement;

B. Distribute by mail a copy of this order and an announcement in the form shown in Appendix A, within thirty (30) days after this order becomes final, to each of its members and to each state society of certified public accountants;

C. Publish this order and an announcement in the form shown in Appendix A, within sixty (60) days after this order becomes final, in an issue of the "Journal of Accountancy," AICPA's monthly journal, or in any successor publication, in the same type size normally used for articles which are published in the "Journal of Accountancy" or in any successor publication;

D. Within ninety (90) days after this order becomes final, publish and distribute to all members of AICPA and to all personnel, agents, or representatives of AICPA having responsibilities with respect to the subject matter of this order revised versions of AICPA's Code of Professional Conduct, Bylaws, concepts of professional ethics, interpretations, ethical rulings, or other policy statements or guidelines of AICPA which (1) delete any material that is inconsistent with Part II of this order and (2) otherwise comply with this order;

E. File with the Federal Trade Commission within sixty (60) days after this order becomes final, one (1) year after this order becomes final, and at such other times as the Federal Trade Commission may by written notice to AICPA request, a report in writing setting forth in detail the manner and form in which it has complied and is complying with this order;

F. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Parts II and III of this order, including any written communications and any summaries of oral communications, and any disciplinary action; and

G. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in AICPA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

**Appendix A—Announcement**

As you may be aware, the American Institute of Certified Public Accountants ("AICPA") has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that AICPA may not interfere if its members wish to engage in any of the following activities:

(1) Accepting contingent fees from nonattest clients;

(2) Accepting disclosed commissions for products or services supplied by third parties to nonattest clients;

(3) Engaging in advertising and solicitation;

(4) Making or accepting disclosed payments for referring potential clients to a CPA; or

(5) Using trade names.

The order does not prevent AICPA from formulating reasonable ethical guidelines prohibiting solicitation, advertising or trade names that it reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

In particular, without attempting to be all-inclusive, the agreement between AICPA and the Federal Trade Commission means that as long as its members do not engage in falsehood or deception, AICPA cannot prevent or discourage them from engaging in the following practices, among others:

(a) In-person solicitation of prospective clients;

(b) Self-laudatory advertising;

(c) Comparative advertising;

(d) Testimonial or endorsement advertising;

(e) Advertising that some members may believe is "undignified" or lacking in "good taste";

(f) Assisting any State government that is not an attest client in claiming a Medicare refund pursuant to a contingent fee contract;

(g) Preparing financial plans for nonattest clients for which members will be compensated by commissions from the sellers of products or services that such clients purchase;

(h) Using trade names, such as "Suburban Tax Services";

(i) Paying referral fees to marketing firms that assist members in soliciting potential clients; and

(j) Offering clients a discount for referring a prospective client.

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed.

Philip B. Chenok, President, American Institute of Certified Public Accountants.

**Dissenting Statement of Commissioner Azcuenaga**

I dissent from the decision to accept for public comment the proposed consent agreement with the American Institute of Certified Public Accountants. To the extent that this matter presents legally cognizable efficiency justifications that are unique to the accounting profession, the case breaks new ground. In addressing whether a violation of law has occurred, however, we have explored the theoretical costs of the challenged ethical rules far more rigorously than their benefits. It would be useful and responsible to devote at least as much effort to understanding the value of longstanding tenets of professionalism as to understanding their costs before changing those tenets by fiat.

**American Institute of Certified Public Accountants Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the American Institute of Certified Public Accountants ("AICPA"). The agreement would settle charges by the Federal Trade Commission that AICPA has violated section 5 of the Federal Trade Commission Act by restraining competition among certified public accountants ("CPAs") in the United States. The Commission charged AICPA with injuring consumers by unreasonably restricting CPAs' use of contingent fees and commissions for providing services to nonattest clients; referral fees; and truthful, nondeceptive advertising, solicitation and trade names.

AICPA agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

*The Complaint*

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges that AICPA is a voluntary association of almost 264,000 CPAs, about three-quarters of the CPAs in the United States. Many AICPA members are in the practice of public accounting and compete among themselves and with other CPAs. AICPA maintains and enforces a Code of Professional Conduct that it has used to restrain competition among CPAs.

According to the complaint, AICPA has restricted the methods CPAs may use to set their fees. AICPA has prohibited CPAs from providing professional services on a contingent fee or commission basis to all persons, including those for whom a CPA is not also performing attest services. An attest service, for purposes of the complaint, means any of the following: an audit; a review of a financial statement; a compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will rely on the compilation and the CPA does not disclose a lack of independence; and an examination of prospective financial information.

AICPA's contingent fee and commission restrictions have harmed consumers in various ways. For example, the contingent fee rule has prevented CPAs from agreeing to assist State governments to obtain Medicare refunds from the United States Government for no fee if the States receive no refunds. Moreover, the commission rule has prevented CPAs from assisting consumers by preparing financial plans and accepting payment in the form of commissions only when consumers buy financial products recommended by the CPA.

The complaint further alleges that AICPA has restricted CPAs' use of truthful, nondeceptive advertising, including self-laudatory or comparative advertising, testimonial or endorsement advertising, and advertising that AICPA may find not professionally dignified or in good taste. For example, AICPA's interpretations of its advertising rules may have deterred CPAs from advertising that they are "real tax experts," that they offer "the expertise of a large national firm," or that "John Smith says that our firm was particularly responsive to his needs."

According to the complaint, AICPA has also restricted CPAs from directly soliciting potential clients and from paying referral fees. These restrictions may have prevented CPAs from soliciting clients by mail and paying marketing firms to refer clients to them.

Finally, the complaint alleges that AICPA has restricted CPAs' use of nondeceptive trade names. For example, AICPA's rules may have prevented CPAs from using trade names such as "Suburban Computer Services" and "Smith and Jones, CPAs, Tax Services" even if such a name truthfully reflects services provided by the CPA.

According to the complaint, AICPA has restrained competition among CPAs based on price, quality, and other terms of service; deprived consumers of information about the availability, price, and quality of CPA services; and

deprived consumers of the benefits of free and open competition among CPAs.

*The Proposed Consent Order*

The proposed consent order prohibits AICPA from restricting CPAs from providing professional services for a contingent fee or a disclosed commission to any person for whom the CPA is not also performing an attest service. AICPA may continue prohibiting members from using these methods of payment for a CPA's attest clients.

The order prohibits AICPA from restricting CPAs' use of referral fees that are disclosed.

The proposed order prohibits AICPA from restricting advertising, solicitation, or the use of trade names by CPAs, unless AICPA reasonably believes such activities would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The order also prohibits AICPA from encouraging or assisting any association of accountants to engage in any act that would violate the order if done by AICPA.

Finally, the proposed consent order requires AICPA to distribute a copy of the order and any revised ethics rules to AICPA personnel, AICPA members, and each state society of CPAs; publish the order in AICPA's "Journal of Accountancy"; publish and distribute to AICPA personnel and members revised versions of AICPA's code, bylaws, interpretations, ethical rulings, or other policy statements or guidelines that comply with the order; and file compliance reports.

The purpose of this analysis is to aid public comment on the proposed order. It is not an official interpretation of the agreement and proposed order and it does not modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-7918 Filed 4-3-89; 8:45 am]

BILLING CODE 6750-01-M

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**16 CFR Part 13**

**[Docket No. C-3246]**

## Sun Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Radnor, PA corporation to divest terminals and related assets and operations of Atlantic Petroleum Corporation (Atlantic) that are located in certain parts of NY and PA. Also, respondent is required to obtain FTC approval before making any acquisition of any light products terminals or light products pipelines in certain parts of NY or PA, and is required to keep the "hold-separate agreement" in effect until the Commission has approved the divestiture of the property.

**DATE:** Complaint and Order issued March 6, 1989.[1]

**FOR FURTHER INFORMATION CONTACT:** Arthur J. Nolan, FTC/S-3302, Washington, DC 20580. (202) 326-2615.

**SUPPLEMENTARY INFORMATION:** On Monday, November 7, 1988, there was published in the **Federal Register**, 53 FR 44888, a proposed consent agreement with analysis In the Matter of Sun Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication.

**List of Subjects in 16 CFR Part 13**

Gasoline, Petroleum products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-7917 Filed 4-3-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20508.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 89-73, RM-6523]**

## Radio Broadcasting Services; Linden, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Linden Radio Joint Venture, permittee, Channel 275A, Linden, Alabama, seeking the substitution of Channel 275C2 for Channel 275A and modification of its permit accordingly. Reference coordinates utilized for this proposal are 32-28-03 and 87-37-48.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Ellis J. Parker, 11133 Stephalee Lane, Rockville, MD 20852.

**FOR FURTHER INFORMATIOIN CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-73, adopted February 22, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7896 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[RM Docket No. 89-71, MM-6509]**

## Radio Broadcasting Services; East Porterville, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Central California Broadcasting, permittee of Station KPOR-FM, Channel 263A, East Porterville, California, seeking the substitution of Channel 263B1 for Channel 263A and modification of its permit accordingly. Reference coordinates utilized for this proposal are 35-53-00 and 118-56-00.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold R. Miler, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-71, adopted February 22, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7897 Filed 4-3-89; 8:45 am]

BILLING CODE 6717-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-72, RM-6520]**

## Radio Broadcasting Services; Lompoc, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Bob Janecek, seeking the allotment of Channel 224A to Lompoc, California, as that community's fourth local FM service. Reference coordinates used for Channel 224A at Lompoc are the city reference point at 34-38-24 and 120-27-30.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036-5339.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-72, adopted February 22, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7898 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-68, RM-6382]**

## Television Broadcasting Services; Clermont and Cocoa, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Brevard Community College ("BBC"), licensee of WRES-TV, Channel 18, Cocoa, Florida and Press Television Corporation ("Press"), permittee of WCLU-TV, Channel 68, Clermont, Florida, proposing to substitute Channel 18 for Channel 68 in Clermont and to substitute Channel 68 for Channel 18 in Cocoa, which is an exchange of commercial for noncommercial television. The Cocoa station can be operated on Channel 68 at the existing authorized site while the Clermont station must change transmitter sites to meet the spacing requirements for Channel 18. The coordinates for the proposed Clermont, Channel 18 allotment are North Latitude 28-34-51 and West Longitude 81-04-32. The coordinates for the proposed Cocoa, Channel 68 allotment are North Latitude 28-21-14 and West Longitude 80-45-57. The Commission's temporary freeze on TV petitions for rule making and construction permit applications does not apply because this proposal involves an exchange of allotments.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Alan C. Campbell, Esq., Dow, Lohnes, and Albertson, 1255 23rd Street, NW., Suite 500, Washington, DC 20037 (Counsel for Press Television Corporation) and Richard J. Bodorff, Esq., Carroll John Yung, Esq., Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for Brevard Community College).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–68, adopted March 7, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–7899 Filed 4–3–89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 89–70, RM–6610]**

## Radio Broadcasting Services; Streator, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Caroline Daugherity ("petitioner") proposing the allotment of Channel 291A to Streator, Illinois, as that community's first local FM service. The coordinates for this proposal are 41–07–30 and 88–49–48.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Caroline Daugherity, 25 Boys Road, Streator, Illinois 61364, (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–70, adopted February 27, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex part contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**Lists of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–7900 Filed 4–3–89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 89–69, RM–6303]**

## Radio Broadcasting Services; Tell City, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Michael H. Hagedorn, and supported by Tell City Radio Company, seeking the allotment of FM Channel 245A to Tell City, Indiana, as that community's first local broadcast service. Reference coordinates for this proposal are 38–00–10 and 86–43–00.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the parties, as follows: Michael H. Hagedorn, 419 Main Street, Tell City, IN 47586; and Jerrold D. Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Wash., DC 20033 (counsel for Tell City Radio Company).

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–69, adopted February 28, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73:**

Radio Broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7901 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-74, RM-6440]**

## Radio Broadcasting Services; Bourbon, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Lake Broadcasting, Inc., proposing the allotment of FM Channel 244A to Bourbon, Missouri, as that community's first FM broadcast service. The coordinates used for Channel 244A at Bourbon are 38-09-18 and 91-14-30.

**DATES:** Comments must be filed on or before May 15, 1989, and reply comments on or before May 30, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lake Broadcasting, Inc., 1360 S. Fifth Street, Suite 365, St. Charles, Missouri 63302.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-74, adopted February 22, 1989, and released March 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-7902 Filed 4-3-89; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 54, No. 63
Tuesday, April 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 31, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

#### Revision

- Agricultural Stabilization and Conservation Service

Farm Operating Plan for Payment Limitation Review and Determination of Eligibility of Foreign Individuals or Entities to Receive Progam Benefits
ASCS-561; 561A; CCC-501A, 501B; 502A; 502B; 502C; 502D; 502L
Annually
Farms; 1,600,000 responses; 1,600,000 hours; not applicable under 3504(h)
Sherri Newsberry, (202) 475-5926.

- Agricultural Stabilization and Conservation Service

7 CFR 1435—Price Support Loan Program for the 1986 through 1990 Crop Sugar/beets and Sugarcane
SU-2, SU-4, SU-5, CCC-278
Annually
Businesses or other for-profit; 230 responses; 295 hours; not applicable under 3504(h)
Lynda Moore, (202) 447-4229.

- Farmers Home Administration

7 CFR 1955-B, Management of Property
None
On ocassion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 2,910 responses; 970 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

- Farmers Home Administration

7 CFR 1951-M, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing
None
On occasion
Individuals or households; Non-profit institutions; 2,200 responses; 2,129 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

- Farmers Home Administration

7 CFR 1951-G, Borrower Supervision, Servicing and Collection of Single Family Housing Accounts
FmHA 1951-23, 1951-37
Individuals or households; 78,000 responses; 21,915 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

- Farmers Home Administration

7 CFR 1980-G, Nonprofit National Corporations Loan and Grant Programs
FmHA 1980-60, -61, -63
Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit; Non-profit institutions; 943 responses; 205 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

#### Extension

- Agricultural Stabilization and Conservation Service

Monthly Report and Remittance of Amount Due for all Milk Marketed Commercially by Producers
CCC-310
Monthly
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 18,000 responses; 4,500 hours; not applicable under 3504(h)
Joseph Chervenic, (202) 447-3679.

- Rural Electrification Administration

Report of Progress of Construction and Engineering Services
REA Form 178, REA Form 457
Monthly
Small Businesses or other organizations; 1,100 responses; 800 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382-1900.

- Animal and Plant Health Inspection Service

Field Investigation (READI)
VS Form 12-27 and A, B
Recordkeeping; On occasion
Farms; Business or other for-profit; Small businesses or organizations; 265 responses; 750 hours; not applicable under 3504(h)
Dr. Maurice A. Mixson, (301) 436-8073.

#### New Collection

- Food and Nutrition Service

School Nutrition Programs Update
None
One-time data collection
State or local governments; 450 responses; 98 hours; not applicable under 3504(h)
Joan McLaughlin, (703) 756-3115.

#### Existing

- Forest Service

Ski Area Term Special Use Permit
FS-2700—*
Annually
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 165 responses; 2,460 hours
John Shilling, (202) 382-9426.

- Agricultural Stabilization and Conservation Service

7 CFR 729—1446 Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts
ASCS-278, -101, -1008, -1002, -1007, -1030, -1011, -1010
On occasion
Farms; 627,865 responses; 127,776 hours; not applicable under 3504(h)
Paul P. Kume, (202) 447-9003.

**Jane A. Benoit,**
*Departmental Clearance Officer.*

[FR Doc. 89-7988 Filed 4-3-89; 8:45 am]
BILLING CODE 3410-01-M

## Office of the Secretary

### Meat Import Limitations; Second Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177, Pub. L. 100–418, and Pub. L. 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1989 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

The estimated aggregate quantity of meat articles for calendar year 1989 announced in the Notice published in the **Federal Register** on January 5, 1989 (54 FR 320), has been revised in accordance with the amendments to the Act by the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Pub. L. 100–449).

In accordance with the requirements of the Act, I have determined that:

1. The estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1989 is 1,245.3 million pounds.

2. The second quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1989 is 1,315 million pounds.

Done at Washington, DC this 30th day of March, 1989.

**Clayton Yeutter,**

*Secretary of Agriculture.*

[FR Doc. 89–7969 Filed 4–3–89; 8:45 am]

BILLING CODE 3410–10–M

## Animal and Plant Health Inspection Service

**[Docket No. 89–037]**

### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in the State of Florida of genetically engineered tomato plants, modified to express the delta-endotoxin gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5940. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 88-314-05.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. APHIS has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company of Chesterfield, Missouri, has submitted an application for a permit for release into the environment, to field test genetically engineered tomato plants modified to express the delta-endotoxin gene. The delta-endotoxin gene was derived from *Bacillus thuringiensis*.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plant under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. An insecticidal gene from *B. thuringiensis* var. *kurstaki* has been inserted into tomato chromosome in a way that would allow the production of delta-endotoxin. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization. In this field trial the introduced genes cannot spread to another plant by cross-pollination, because the field test plot is located at a sufficient distance from any sexually

compatible plants with which these experimental tomato plants could cross-pollinate.

2. Neither the delta-endotoxin gene nor its polypeptide product confers on tomato any plant pest characteristics. *B. thuringiensis* var. *kurstaki* from which the delta-endotoxin gene was obtained is also not a plant pest.

3. The delta-endotoxin gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in its ability to be dispersed or to become established in the environment.

4. The vector used to transfer the delta-endotoxin gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent used to deliver the chimeric vector DNA containing the delta-endotoxin gene into the tomato plant cells is *Agrobacterium tumefaciens*. The bacterial vector agent was eliminated by the use of appropriate antibacterial antibiotics.

6. Horizontal movement of the stably integrated deltaendotoxin gene into a plant genome (i.e., chromosomal DNA) has not been demonstrated. The vector simply delivers and inserts the gene into the tomato genome. The vector does not survive in or on any of the transformed plants. There has been no demonstration of a mechanism in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The size of the field test plot is small (0.5 acre with 1,350 transgenic plants, 250 nontransgenic plants, and up to 500 plants in the border rows) and will be located at a distance of 30 feet from other commercial and breeding tomatoes on a private farm.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500 1509), (3) USDA Regulations Implementing NEPA (7 CFR Part lb), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 29th day of March 1989.

Larry B. Slagle,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–7926 Filed 4–3–89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 90238–9038]

### Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of financial assistance.

**SUMMARY:** For FY 89, Saltonstall-Kennedy (S–K) funds are available to assist persons in carrying out research and development projects which address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting, processing, and associated infrastructures. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications it will fund.

**DATE:** Applications must be received by June 5, 1989.

**ADDRESSES:** Applications should be sent to the applicable regional or Washington Office of the National Marine Fisheries Service (for addresses, see Section III. E.2.).

**FOR FURTHER INFORMATION CONTACT:** Phyllis S. Bentz, S–K Program Manager, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910, Telephone: (301) 427–2358.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

*A. Background*

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3) makes available to the Secretary of Commerce (Secretary) up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects which address aspects of U.S. fisheries, including, but not limited to, havesting, processing, and associated infrastructures. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sections of U.S. fisheries.

*B. Funding*

There is no guarantee that sufficient funds will be available to make awards for all approved projects. For FY 89 about $4.4 million may be used to fund new fisheries research and development projects, subject to availability.

#### II. FY 89 Funding Priorities

Consistent with authorizing legislation, NOAA will emphasize the use of current and future S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity within the fishing industry to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; (2) the potential benefits are too widely dispersed; and (3) the timeframe for resolution of the problem or issue is long or unknown. While multi-year approaches to address priority research areas are encouraged, the funding of short term applications is not precluded.

Fisheries research and development project applications should relate to one or more of the priority areas in the Regional and National sections. Primary consideration for funding will be given to applications addressing the specific priorities. However, NMFS will also consider applications that address other significant industry problems or opportunities (note exceptions which follow).

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will not be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) research evaluating the ability or extent to which fish are attracted to fish aggregating devices

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

(FADs); and (4) extension activities such as newsletters.

Rather than the S–K program, programs administered by NMFS authorized by the Fish and Seagood Promotion Act of 1986 (FSPA) will be the mechanism to conduct promotional and consumer education activities related to fish and seafood. The National Fish and Seafood Promotional Council, established in December 1987, will conduct generic seafood promotion. This Council is authorized to conduct both domestic and export marketing. The species-specific councils, authorized by the FSPA, will market specific species or groups of species. However, for species or products which are not widely available commercially, S–K funds may be used for end-use research, i.e., non-proprietary product concept testing, technical development, and consumer acceptance evaluation where these activities are a logical component of a comprehensive research or development project.

NMFS has identified funding priorities in consultation with a wide cross section of the U.S. commercial and recreational fishing industry, States, and Fishery Management Councils. The priorities are identified on a regional basis. Some priorities were found to relate to several, or all regions and are listed as national priorities.

Priorities for FY 89 funding are listed below, along with a summary of activities funded in FY 88. Applications addressing the priorities must build upon or take into account any past and current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from the applicable regional or Washington office (for addresses, see section III. E.2.).

*A. Northeast Region*

Projects funded in FY 88 focused on developing and demonstrating fishing gear which conserves juveniles and non-target species; improving the quality of mackerel and hake by extra cold storage; developing canned mackerel, mackerel surimi and meat analogues and by-products using minced mackerel and hake; developing the sea robin fishery; developing standards and tests for chemical contamination in fish and shellfish; local fishing vessel safety training programs; and developing a program to enhance survival of hook/tag and release fish caught by recreational fishermen.

For FY 89, projects are solicited which will complement these activities or address other developmental impediments. These priorities apply to all fisheries of the Northeast. Priority for funding will be given to projects that:

1. Develop or demonstrate gear and/or techniques and innovative approaches to resolving conflicts between users of different gear types. Projects should contribute to the conservation and management of fish stocks by reducing by-catch of juveniles or non-target species. Projects may include socio-economic analyses of costs associated with changing over to new gear.

2. Develop new or improved harvesting or processing technology or strategies which increase efficiency, production or competitiveness, targeting non-traditional species.

3. Address problems associated with the quality and wholesomeness of seafood to promote public confidence in seafood.

4. Conduct a comprehensive review of all methodologies and applicabilities of risk analysis for fisheries products being used by Federal, State authorities, agencies and universities. Develop a consensus and prepare a demonstration project.

5. Conduct basic research for domestication and mass culture of regional living fresh-water and marine resources in the areas of genetics, physiology, environmental requirements and impact, animal/plant husbandry, nutrition, disease control, and industrial engineering.

*B. Southeast Region*

Projects funded in FY 88 focused on market potential for eel products; limited entry possibilities for Florida spiny lobster; environmental effects on the Georgia blue crab; development of seafood product quality code; a national shellfish pollution indicator study; studies of seafood processing aids; a survey of shrimp cast netters in Georgia; development of strategies to enhance charter and headboat fishing in Puerto Rico; evaluation of incidental finfish catch by shrimp nets; evaluation of crawfish processing and packaging; development of a fisheries allocation model; analysis of waterfront land use trends; artificial reef management and user conflict resolution strategies; analysis of the potential for megalops shrimp in the Gulf of Mexico; inventory of king mackerel size and distribution in south Florida; education of fishermen in seafood processing and marketing; analysis of a microprocessor grader for oyster meat; analysis of baitfish resources along the Florida coast; impact of trawl by-catch on carnivores in the Gulf of Mexico; food science problems associated with Rangia clams; and experimentation with turtle excluder device (TED) designs to minimize shrimp losses.

Applications should address one or more of the following priorities and must (a) utilize and build upon relevant research in related fields, and (b) include appropriate economic evaluation of resulting technology in actual application and/or potential capital or labor dislocations resulting from implementation of results. Projects proposed as a continuation of existing or prior S–K or MARFIN projects should be clearly described with regard to sequential and programmatic relationships.

Projects designed to address the following objectives will receive priority consideration.

1. Develop or demonstrate gear or harvesting methodology that contributes to the conservation and management of fish stocks by reducing by-catch of juvenile, non-target species, or marine mammals and endangered species.

2. Address problems associated with the quality and wholesomeness of seafood, including risk assessment and techniques for promoting public confidence in seafood, including the refinement or implementation of results from prior research in molluscan shellfish sanitation.

3. Encourage the orderly development of fisheries through innovative approaches to the resolution of user conflicts. Projects dealing with conflict resolution in the mackerel and reeffish fisheries would be particularly valuable.

4. Identify and evaluate the impact of changing fishery regulations on existing businesses at the producer, processor and distributor levels. Impacts related to rapidly changing regulatory regimes will receive highest priority.

5. Identify the relationship between habitat and stock abundance or trace the relationship between habitat degradation and stock abundance over time.

6. Expand the information base of specific fisheries where the inadequacy of stock information is the primary limitation to managing and allocating stocks between commercial and recreational fisheries. The following examples have been specifically identified: (a) Develop and test a program for collecting swordfish sex ratios and age/size-frequencies for the longline fisheries; (b) expand tagging programs to determine rates of movement and mixing of both king and Spanish mackerel stocks; and (c) determine the recreational catch of spiny lobsters in Florida.

7. Conduct basic research for domestication and mass culture of

regional living fresh-water and marine resources in the areas of genetics, physiology, environmental requirements and impact, animal/plant husbandry, nutrition, disease control, and industrial engineering.

*C. Southwest Region*

The Southwest Region is comprised of two distinct geographic areas—the U.S. Pacific Islands and three mainland states (California, Nevada, and Arizona). The island fisheries differ significantly in many instances from the mainland fisheries. Accordingly, a list of proposed funding priorities for each of these geographic areas has been established.

1. Pacific Islands

Projects funded in FY 88 provided for development of infrastructure in Guam, regional standardization of a catch data system, detection of fish poisons in the Federated States of Micronesia (FSM), time-depth studies of a longline fishery for sashimi quality tuna, development of a one-step immunoassay for detection of ciguatoxin, longlining studies for sashimi grade yellowfin tuna around Kosrae, evaluation of fish aggregation devices in Palau, improvement of a VHF safety/communication system in American Samoa, creation of a model fish export business in Pohnpei, and development of the sea cucumber fishery in the FSM.

In the Pacific Islands, priority consideration will be given in FY 89 to projects which contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau. High priority will be given to proposals with regional benefits. All applications should be consistent with the cultural and social values of Pacific island communities.

Applications which address problems in the following areas will be given priority for funding in FY 89.

a. Develop a long-range fishery development plan for Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, Federated States of Micronesia and the Republic of Palau. Specific and prioritized fishery development goals and action plans for each island area should be developed.

b. Evaluate and demonstrate the feasibility of handling, holding, and transporting live fish to high value markets.

c. Conduct feasibility studies for the design, engineering and construction of needed fishing vessel support services and facilities. Applications shall clearly demonstrate a need for and benefits of such projects to local fishermen.

d. Evaluate the socio-economic impacts and benefits of the foreign-owned and operated tuna long-line fishery based in Guam and the potential of the local fishing industry of Guam to paticipate in this fishery.

e. Applications related to FADs will be considered, particularly applications that test an array of FAD designs and mooring configurations. Applications must build upon and take into account any current or past work in this area.

f. Develop for Pacific island nations a protocol relating to the transfer and introduction of non-native or exotic species intended for mariculture or other purposes (giant clams, pearl oysters, etc.). The protocol shall take into consideration the potential effects of introducing exotic pathogens, the effects of competition and predation on the native fauna, and economic consequences on existing fisheries. The protocol should strive to reduce uncertainty over the effects of introducing exotic or non-native species and stocks.

g. Conduct basic research for domestication and mass culture of regional living fresh-water and marine resources in the areas of genetics, physiology, environmental requirements and impacts, animal/plant husbandry, nutrition, disease control, and industrial engineering.

h. Develop and produce educational materials to reach a broad marine recreational fishing and public audience with the objective of promoting conservation awareness of fishery resources. This should include, but not be limited to, marine mammal interactions, wise use of fishery resources, and handling and release techniques.

2. Mainland (California, Nevada, and Arizona)

In FY 88, MMFS funded projects to translate a fishing vessel safety manual into Vietnamese, perform a groundfish mesh-size study, conduct a Proposition 65 compliance program, conduct a pilot harvesting and marketing project for squawfish, explore alternatives for gillnetting for white croaker, investigate habitat value and productivity at a Southern California reef, and perform a south Pacific albacore tagging project.

In 1989, general emphasis will be given to research and development activities which will support the continued growth and/or maintenance of the region's industry. Priority will be given to proposals that:

a. Test applications of new technologies or methodologies (such as electrophoresis, and novel tagging and marking techniques) to provide a basis for more accurate and rapid determination of harvests of different runs of salmon in ocean fisheries and allow full harvest of strong runs wthout overfishing weaker runs.

b. Develop or demonstrate gear and/or techniques which contribute to the conservation and management of fish stocks by reducing by-catch of juveniles or non-target species. This may include socio-economic anaylsis of costs associated with changing over to new gear.

c. Develop and evaluate fishery gear, and handling and processing techniques that will improve efficiency of existing fisheries and/or assist in the development of new or underutilized fishery resources (e.g., Pacific mackerel, sardines, shortbelly rockfish, and hagfish).

d. Design and evaluate alternative management strategies for the West Coast groundfish fishery that allow fisheries to continue throughout the year with low risk of long-term overfishing. Strategies should require less intensive data collection and reporting activities than the current trimester review system.

e. Evaluate the feasibility of using seine-caught tuna in alternative markets and undertake feasibility study and evaluation of needed vessel modifications, if any, to take advantage of alternative tuna markets.

f. Conduct basis research for domestication and mass culture of regional living fresh-water and marine resources in the areas of genetics, physiology, environmental requirements and impacts, animal/plant husbandry, nutrition, disease control, and industrial engineering.

g. Develop and produce educational materials to reach a broad marine recreational fishing and public audience with the objective of promoting conservation awareness of fishery resources. This should include, but not be limited to, marine mammal interactions, wise use of fishery resources, and handling and release techniques.

*D. Northwest Region*

The Northwest fishing industry requires a research and development program which focuses on fully utilizing groundfish found in the exclusive economic zone (EEZ) off Oregon, Washington and Alaska. A significant part of the Region's industry is heavily dependent on the resources found off

Alaska, and therefore projects of high quality which support this segment of the industry will also be considered.

1. West Coast Groundfish (Oregon, Washington and Alaska). NMFS funded projects in FY 88 that will: Continue development of an automated system for the detection of parasites and pin bones in fish fillets; assess the feasibility of a fishing gear design and test facility; conduct a study of mortality of hook-and-line caught salmon in the marine recreational fisheries; investigate joint venture opportunities outside the U.S. EEZ; develop fish feed from groundfish waste; and develop refined video recordings of experimental trawl nets tested for by-catch of Tanner crab. The FY 89 priorities outlined below will focus on research and development activities which will support the continued growth of the Region's industry. Groundfish species in need of further development include pollock, whiting, shortbelly rockfish, and assorted flatfish found in the EEZ.

a. Develop new or improved processing and harvesting technologies or strategies which increase efficiency, productivity, and competitiveness of the Region's industry and reduce by-catch of prohibited and incidental species.

b. Design a public data base and methods of analysis to monitor world-wide prices, distribution, and availability of groundfish products for the purpose of assisting in the formulation of fisheries management, trade, and business strategies.

c. Research and analyze alternative limited access strategies which will deter overcapitalization of the groundfish fleet.

d. Develop and evaluate waste utilization technologies for both shoreside and at-sea operations which process fish waste into commercial products.

2. The following FY 89 priorities pertain to all Northwest Region fisheries:

a. Conduct basic research for domestication and mass culture of regional living marine resources in the areas of genetics, physiology, environmental requirements and impacts, animal/plant husbandry, nutrition, disease control, and industrial engineering.

b. Encourage the orderly development of commercial and recreational fisheries through innovative approaches to the resolution of user conflicts.

*E. Alaska Region*

1. Alaska Groundfish. The research and development program in Alaska has focused on the domestic utilization of the groundfish resources in the EEZ off Alaska. Technology development and application have been stressed to support U.S. industry efforts in becoming a competitive and dominant force in the utilization of these EEZ resources. In FY 88, funded projects addressed development inpediments in the areas of marine safety, flatfish utilization, groundfish quality enhancement, by-product utilization, international trade in West Coast groundfish, shellfish by-catch mortality rates, and commercial fishing/marine mammal interactions.

Groundfish of the EEZ continue to be the priority species for development research in FY 89. Applications which address the following areas will be given priority for funding in FY 89.

a. Continued development and analysis of technology to reduce and/or eliminate negative interactions between commercial fisheries and marine mammal.

b. By-catch utilization and/or avoidance is an area of significant importance to the domestic fishing industry. Requirements in this area include:

(1) Devleopment of new or application of existing technology for the avoidance of taking unwanted or prohibited species.

(2) Development of handling and processing technology for improved utilization of by-catch.

(3) Economic analysis of the consequences of by-catch management alternatives.

(4) Development and testing of an on-board domestic vessel observer program in the EEZ.

c. Development of production cost models for the groundfish complex of the Bering Sea and Gulf of Alaska.

d. Research and analysis to trawl mesh size impact on catch and size composition of Alaska pollock stocks.

e. Conduct fundamental research needed to support the domestication and mass culture of regional living freshwater and marine resources in the areas of genetics, physiology, environmental requirements and impacts, animal/plant husbandry, nutrition, disease control, and industrial engineering.

*F. National*

In FY 88, NMFS funded national projects which address issues crosscutting a number of fisheries and regions. Specifically, NMFS funded projects which investigate the recycling and reuse of marine plastics; support a national symposium addressing shellfish depuration technology and regulations; describe the movement of fresh and frozen seafood products from domestic harvesting through processing, identifying critical control points as a part of a continuing program to establish a comprehensive seafood surveillance system for the U.S. industry; coordinate vessel safety and insurance programs; evaluate *Listeria monocytogenes* inhibitors in smoked fish products; develop marine plastics educational programs on the East, Gulf and West Coasts; analyze fishing tackle export barriers; and develop a rapid sensitive assay for dinoflagellate toxins in seafood.

In FY 89, consideration will be given to applications which:

1. Design a survey of selected chemical contaminants (heavy metals, organics) in major commercial and recreational species and imported products at a design level sufficient to identify the level of public health risks associated with pollutants found in the edible tissue.

2. Design and conduct a national consumption survey of fish and shellfish harvested commercially and recreationally. Consumption data will be used in combination with contaminant data in future development of human health risk assessment models associated with seafood consumption.

3. Prepare a computerized data base of artificial reef programs and projects in the United States.

4. Review and characterize existing non-market valuation studies of estuarine and marine wetlands. Determine which results best reflect total value, including nutrient and contaminant recycling, habitat, food web, and aesthetics.

**III. How to Apply**

*A. Eligible Applicants.*

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands [NMI], being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any corporation, partnership, association, or other entity, nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or

Continued

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Successful applicants for S–K funding, at the discretion of the NOPAA Grants Officer, may be rquired to have their financial management system certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first time applicant for Federal grant funds may be subject to a preaward accounting survey by the Department of Commerce prior to execution of the award. NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about fisheries research and development and the priorities and procedures included in this solicitation.

*B. Amount and Duration of Funding*

For FY 89, NMFS may have an estimated $4.4 million available to fund new fishery research and development projects. Grants or cooperative agreements will be awarded for a period of one to three years.

To qualify as a multi-year award, a project must, in addition to the criteria elaborated under "Administrative Requirements" and other applicable sections of this notice, meet the following criteria: (1) The technology to be developed must require more than a single year to research, develop and demonstrate; (2) the products or services to be developed require more than a single year to research, design and demonstrate and/or market; (3) single year funding would otherwise result in *significant* discontinuity in project implementation; (4) projects must indicate complete objectives, tasks, or products for the end of each funding cycle. The burden of proof for meeting these criteria rests with the applicant. No multi-year projects will be funded beyond three consecutive years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives were met during the prior year.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding decisions for successful applications generally will be made by September 30, 1989.

*C. Cost-Sharing Requirements*

NMFS must provide at least 50 percent, as provided by statute, but will provide no more than 80 percent of total project costs. The non-Federal share may include funds received from private sources or from State or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds except as provided by Federal statute. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources may range from 20 to 50 percent of the costs of the project. The S–K Act, as amended, requires the Government to provide at least 50 percent of total project costs. The 20 percent minimum non-Federal cost share has been established by NOAA as a matter of policy. The percentage of cost share will be a factor in the selection of projects to be funded. Successful applicants will be bound by the percentage of cost share reflected in the grant awards. Exemption from cost-sharing requirements may be granted in unusual circumstances to applicants who demonstrate in their applications the financial inability to meet cost-sharing requirements, and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, Republic of the Marshall Islands, the Federated States of Micronesia, Puerto Rico and the U.S. Virgin Islands. In the case of American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands, under the provisions of 48 U.S.C. 1469a.(d), any requirement for local matching funds under $200,000 (including in-kind contributions) shall be waived. The total project costs will be determined as described below.

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant, cooperative agreement, or contract award between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, will be determined on the basis of guidance provided in OMB Circulars. In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

*D. Format*

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant

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nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) The title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligations in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

describing the specific tasks to be performed. Applications must identify the specific priorities to which they are responding. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must be clearly and completely submitted in the following format:

1. Cover Sheet: An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices, NMFS Washington Office or Department of Commerce National Capital Administrative Support Center; addresses are listed under the "Application Submission and Deadline" section which follows.

2. Project Summary: Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (proposed beginning and ending dates).

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Specific priority(ies) to which project responds.

g. Project objective.

h. Summary of work to be performed. For continuing projects the applicant will briefly describe progress to date in addition to work proposed with the additional funds.

i. Total Federal funds requested (initial and total amount and percentage of total project costs).

j. Project costs to be provided from non-Federal Government sources (initial and total amount and percentage of total project costs).

k. Total project costs.

3. Project Description: Each project within the application must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. Identification of Problem(s): For new projects, identify and completely describe the problem(s) the project addresses. In this description, include: (1) The fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, (4) the specific priorities to which the project responds, and (5) how the problem(s) prevent the fishing industry from developing a fishery or using existing fishery resources. If the application is for the continuation of an existing S–K funded project, describe progresss to date and explain why continued funding is necessary.

b. Project Goals and Objectives: State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. Need for Government Financial Assistance: Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. Participation by Persons or Groups Other than the Applicant: Describe (1) the level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. Federal, State, and Local Government Activities: List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. Project Outline: This section requires the applicant to prepare a general narrative fully describing the work to be performed which will achieve the previously articulated goals and objectives. A chart which outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included.

The narrative should include information which responds to the following questions.

(1) How will the project be structured?

(2) What major products, (e.g., research, services, or reports) will result and what are their specific nature?

(3) What supporting activities (be as specific as possible) will be undertaken to produce major products?

(4) Who will be responsible for carrying out the various activities? (Highlight work which will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evalaute final products or services, and how will it be integrated into the project?

The milestone chart should graphically illustrate:

(1) Steps to accomplish the major products, research, services and/or activities;

(2) Supporitng activities and associated timelines; and

(3) The indivdual(s) responsible for the various activities. Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide as much detail as possible. Applications lacking sufficient detail may be eliminated from further consideration.

g. Project Management: Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through subcontracts, applicants must follow procurement guidance in 15 CFR Part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. If a subcontractor is chosen prior to application submission, the process used must be documented.

h. Project Impacts: Describe the impact of the project in terms of anticipated increased landings, production, sales, improvement in product quality or safety, or other measurable factors. Describe how the results of the project will be made available to the fishing industry.

i. Evaluation of Project Impacts: The procedures for evaluating the relative success or failure of a project in achieving its goals should be clearly delineated within each application. It is the responsibility of applicants to identify the best methodology for evaluating project effectiveness. Evaluation procedures in each application should at a minimum contain the following:

(1) Specifc methods should be defined to evaluate the accomplishments of the project in terms of its original goals and objectives.

(2) The benefits of the project should be clearly defined. Depending on the nature of the benefits, the evaluation methodology should be able to accurately assess the benefits. For example, if statistical procedures are to be used, their specific application and use in the project evaluation should be described.

(3) Where benefits might be termed "intangible," methods should be defined to measure results. For example, in the case of safety programs, will follow-up surveys be conducted to correlate potential reductions in accident or insurance rates?

j. Project costs: The applicants must submit cost estimates showing total project costs as well as the Federal and non-Federal shares. No cost sharing can come from another Federal source except as provided by Federal statute. Applicant's matching costs are to be divided into cash and in-kind contributions. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, an applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual outyear costs) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. To support its budge the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of direct costs must be specified in the categories listed below. The budget may also include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government. Estimated indirect costs may be included pending approval of a negotiated Federal indirect cost rate. The Grants Officer listed in Section E of this notice will assist prospective applicants in obtaining a negotiated Federal indirect cost rate, if appropriate.

(1) Personnel.

(a) Salaries (by position title) of recipient employees and amount for the project. Also, identify percent of person's time spent on the project.

(b) Fringe Benefits (amount only). This entry should be the proportionate cost of fringe benefits paid for amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

(2) Consultants. Identify specific tasks and work to be performed by consultants.

(3) Contracts. Identify all work to be completed by contract. If a commitment has been made prior to application for funding to contract with a particular vendor, explain how the vendor was selected, type of contract, deliverables expected, timeframe, and cost. All contracts must meet the requirements established in OMB Circulars.

(4) Travel and Per Diem. Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. Registration fees should be included.

(5) Equipment and Furniture. Identify items of equipment/furniture purchases or rental costs with the intended use.

(6) Supplies. Identify specific supplies necessary for the accomplishment of the project.

(7) Indirect Costs. This entry should be based on the applicant's established indirect cost rate with the Federal Government. Estimates may be included pending approval of a negotiated Federal indirect cost rate.

(8) Other Costs. Identify any specific costs that are only applicable to the project.

4. Project Consolidation: Applicants may submit two or more projects under one application but must identify estimated project costs and budgets separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. Supporting Documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project of fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

*E. Application Submission and Deadline*

1. Deadline. NMFS will accept applications for funding under this program between April 4, 1989, and June 5, 1989. An application will be accepted if the application is received by any of the offices listed below on or before June 5, 1989.

2. Submission of Applications to NMFS Reviewing Offices: Applicants must submit one signed original and two (2) copies of the complete application. Applications are not to be bound in any manner.

a. Applications relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):

Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, Telephone: (508) 281–9267;

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands):

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, FL 33702, Telephone: (813) 893–3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands, Northern Mariana Islands):

Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Room 2005, Terminal Island, CA 90731, Telephone: (213) 548–2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):

Regional Director, National Marine Fisheries Service, Bin C15700, 7600 Sand Point Way, NE., Seattle, WA 98115, Telephone: (206) 527–6150.

Alaska Region (Alaska):

Regional Director, National Marine Fisheries Service, P.O. Box 1668, 709

West Ninth Street, Juneau, AK 99802, Telephone: (907) 586–7221.

b. Applications addressing national priorities should be sent to:

Director, Office of Trade and Industry Services, National Marine Fisheries Service, 1335 East West Highway, Room 6204, Silver Spring, MD 20910, Telephone: (301) 427–2358.

c. Questions of an administrative nature should be referred to the NOAA Grants Office listed below.

National Capital Administrative Support Center, (DC33) NBOC1 Room 106, 11420 Rockville Pike, Rockville, MD 20852. Telephone: (301) 443–8574.

**IV. Review Process and Criteria**

*A. Evaluation and Ranking of Proposed Projects*

For applications meeting the requirements of this solicitation, NMFS will determine which office should evaluate the proposed work. This will normally be the office where the application is filed.

1. Consultation with Interested Parties: NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. The regional and Washington Offices of NMFS will make project descriptions available in the following manner:

a. Public review and comment. Regional applications may be inspected at the office to which they are submitted. All applications will be available for inspection at the NMFS Office of Trade and Industry Services, 1335 East-West Highway, Room 6204, Silver Spring, Maryland from June 12, 1989 to June 26, 1989. Written comments will be accepted at a regional or the Washington Office until June 26, 1989.

b. Consultation with members of the fishing industry. NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

c. Consultation with Government agencies. Applications will be reviewed in consultation with NMFS Offices, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other Federal agencies. The Regional Fishery Management Councils will be asked to review applications which could impact a managed fishery, the by-catch of a managed fishery, or a fishery management issue.

2. Technical Evaluation: NMFS, in consultation with appropriate private and public sector authorities, will conduct a technical evaluation of each project. If an application contains two or more projects, NMFS will evaluate the projects separately. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will give projects point scores based on the following evaluation criteria:

a. Problem Description and Conceptual Approach for Resolution. Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (20 points).

b. Soundness of Project Design/ Technical Approach. Evaluated will be whether or not the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points).

c. Project Management and Experience and Qualifications of Personnel. Evaluated will be the organization and management of the project, the project's personnel in terms of related experience, qualifications, and extent of cooperation with the fishing industry and government throughout the various phases of the project. (15 points).

d. Project Monitoring and Evaluation. Evaluated will be the effectiveness of the applicant's proposed methods to track project progress and evaluate the final accomplishments of the project in terms of its original goals and objectives and contribution to fisheries development. (20 points).

e. Project Costs. Evaluated will be the justification and allocation of the budget in terms of the work to be performed. Taken into account will be unreasonably high or low project costs, as well as S-K funds requested which should more appropriately be provided by the applicant. (20 points).

3. Formal Industry Review: After the technical evaluation, each reviewing office will solicit comments from the fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. The rankings may be obtained through independent reviews or involve formal meetings of industry representatives.

Considered in the industry rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. The industry reviewers will rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

*B. Funding Awards*

After projects have been evaluated, the reviewing NOAA Fisheries offices will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries, NMFS, who will determine the number of projects to be funded based on the recommendations provided, consistency of projects with the identified fisheries objectives, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by NOAA Grants Officers. Although in unique circumstances pre-award costs may be approved, projects should not be initiated in expectation of Federal funding until a notice of award document is received. Any costs incurred prior to issuance of the award document are at the applicant's own risk.

**V. Administrative Requirements**

*A. Obligations of the Applicant.*

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller General of the United States, or their authorized representatives.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports

will be submitted to the individual specified as the Program Officer in the funding agreement. The content of these reports will include, at a minimum, a summary of progress and expenditures to date, including:

a. Description of tasks scheduled and accomplished;

b. Description of actual and scheduled expenditures;

c. Explanation of any differences between actual and scheduled work or expenditures; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is awarded, submit an original and two copies of a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. The content of the evaluation should include, at a minimum:

a. Description of the original project goals and objectives, and the context in which the project was to benefit the fishing industry. This description should address the following questions:

(1) What were the original project goals and objectives?

(2) To what extent were goals measurable or quantifiable?

(3) Were modifications made to project goals and objectives and, if so, what was the cause for the modifications?

(4) Were the goals and objectives attained? How? If not, why?

b. Description of the specific accomplishments (research results, products, or services) of the project and the relationship of these to the project's goals and objectives.

(1) List the specific research results, products, or services produced by the project.

(2) Describe the value of the products or services by themselves or in concert with other activities.

c. Description of how the project benefitted the fishing industry. This description should address the following questions:

(1) To what extent did and/or will the public have access to the products or services produced by the project?

(2) To what extent did or will the fishing industry and associated infrastructure (universities, financial institutions, etc.) use the project's products or services to satisfy a need or lessen business or other risks?

(3) What are the specific economic or other benefits the fishing industry received as a result of its or others' use of the research results, products, or services of the project?

(4) Nature of benefits:

(a) To what extent are benefits measurable vs. intangible?

(b) Are benefits one-time or continuing?

(c) Are the benefits the result of a "negative" finding?

7. If a project is funded by grant or cooperative agreement, an applicant must comply with applicable Department of Commerce regulations, OMB Circulars and Treasury Circulars. Applicants are also subject to the provisions of 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)." Copies are available from the NOAA Grants Offices listed above.

8. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications (in addition to the Final Report in 6. above) printed with grant funds to the Office of Trade and Industry Services, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

9. Any State agency submitting an application for funding is required to complete item 22 on Standard Form 424 regarding clearance by the State Point of Contact (SPOC) established as a result of Executive Order 12372.

*B. Obligations of the National Marine Fisheries Service*

NMFS will: 1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Washington or Regional Offices for clarification or explanation of any information appearing in this notice.

3. Monitor all projects after award to ascertain their effectiveness in achieving their objectives. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the solicitation at the time it is published in the **Federal Register**.

*C. Responsibility of the Grants Officer*

The Grants Officer is responsible for the administration processing and for all business and financial aspects of NOAA Federal assistance awards. Questions from the recipient relating to these aspects will be referrd to the Grants Officer. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

*D. Legal Requirements*

The applicant will be required to satisfy the requirements of applicable Federal, State and local laws.

**VI. Classification**

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or exports markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirements to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0135.

This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*.

(Federal Domestic Assistance Catalog No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: March 29, 1989.

**James W. Brennan,**

*Assistant Administrator for Fisheries.*

[FR Doc. 89-7873 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-22-M

## Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will hold public meetings on April 23–24, 1989, and April 27–28 at the Sheraton Grand Hotel, 4860 West Kennedy Boulevard, Tampa, FL.

On April 27, 1989, the Council will begin meeting at 8:30 a.m. From 8:45 a.m., to 10:45 p.m., the Council will take public comments on Amendment #1 to the Reef Fish Fishery Management Plan (FMP), receive committee recommendations, and take action on provisions of the Amendment. The meeting will adjourn at 5 p.m.

On April 28 the Council will meet at 8:30 a.m., to continue discussion of committee recommendations, to take action on provisions of Amendment #1 to the Reef Fish FMP, to take final action on the amendment and regulations. The Council will also consider emergency action on sharks, and receive enforcement and director reports. The meeting will adjourn at 3:15 p.m.

On April 23 at 2:30 p.m., the Shark Management Committee will meet until 5 p.m. The Reef Fish Management Committee will begin meeting on April 24 at 8 a.m., to discuss the revised Regulatory Impact Review (RIR), public, Advisory Panel (AP), Scientific and Statistical Committee (SSC), and Federal comments, and to discuss proposed regulations. This meeting will adjourn at 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: March 30, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-7940 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-22-M

## Gulf of Mexico and South Atlantic Fishery Management Councils; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils and their Intercouncil Mackerel Committee will hold public meetings on April 25 and 26, 1989, at the Sheraton Grand Hotel, 4860 West Kennedy Boulevard, Tampa, FL.

On April 26 at 8:30 a.m., the Gulf of Mexico and the South Atlantic Fishery Management Councils will meet jointly to review actions of the intercouncil committee on setting a total allowable catch (TAC). Public testimony on TAC and allocations is scheduled to begin at 8:50 a.m. Both Councils will continue meeting to discuss bag limits, quotas for king and Spanish mackerel, and to review unresolved issues related to the Mackerel Amendment #4 and Amendment #5—Options Paper. The Councils also will discuss Spiny Lobster Amendment #2. The meeting will adjourn at 5:15 p.m.

The Council's Mackerel Management Committees will meet jointly on April 25 at 8 a.m., to review the mackerel stock assessment, to discuss the stock assessment group report, to review Advisory Panel (AP) and Scientific and Statistical Committee (SSC) recommendations, to recommend a TAC, allocations, and bag limits for king and Spanish mackerel, and to review unresolved issues related to the Mackerel Amendment #5—Options Paper. The meeting will adjourn at 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: March 30, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-7941 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-22-M

## New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on April 5, 1989, at the Colonial Hilton Hotel, Route 128, Wakefield, MA. The meeting will begin at 9 a.m., and will adjourn at approximately 5 p.m.

The Council will discuss reports from the Groundfish, Scallop, Lobster, and Halibut Oversight Committees. There also will be a review of the status of Massachusetts internal waters joint ventures for herring, a summary of the public hearings held on Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), and a presentation on the Canadian fisheries management system.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: March 30, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-7942 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-22-M

## South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings at the Sheraton Grand Hotel, 4860 West Kennedy Boulevard, Tampa, FL.

The South Atlantic Fishery Management Council will meet on April 28, 1989, at 10 a.m., to discuss committee reports and to update other fishery management matters. The meeting will adjourn at 1 p.m.

The Mackerel Committee will meet on April 24 at 8:30 a.m., and will adjourn at 5 p.m. The Swordfish Committee will meet on April 27, at 8:30 a.m., and be followed by meetings of the Billfish and Advisory Panel (AP) Selection Committees, which will adjourn at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 30, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-7943 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to

NeutraTherm Corporation, having a place of business in Des Moines, Iowa, an exclusive license in the United States to practice the invention entitled "Temperature Adaptable Textile Fibers and Method of Preparing Same", U.S. Patent Application Serial Number 6-876,015. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk of telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89-7909 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-04-M

## Patent and Trademark Office

### Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Austria

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of initiation of proceedings.

**SUMMARY:** The Secretary of Commerce has delegated the authority under section 914 of title 17 of the United States Code to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines for the submission of petitions for the issuance of interim orders were published in November 7, 1984, in the **Federal Register**, 49 FR 44517-9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On March 7, 1989, the Patent and Trademark Office received a petition for the issuance of an interim order from the Austrian Patent Office. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding for consideration of the issuance of an interim order.

In the interests of time, a date is being set for the submission of comments in accordance with paragraph F(a), and a public hearing is being scheduled.

**DATES:** Comments and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 p.m. on April 25, 1989. A public hearing has been scheduled for May 4, 1989, at 1:00 p.m.

**ADDRESS:** Address written comments to: Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231. The hearing will be held in the Commissioner's Conference Room, 9th Floor, Crystal Park Building 2, Room 912, 2121 Crystal Drive, Arlington, Virginia.

Materials submitted and a transcript of the hearing will be available for public inspection in Suite 902, Crystal Park Building 2, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> a series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insultating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under this chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second, that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) that the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) entering into a treaty described in section 902(a)(1)(A), or
>
> (B) enacting legislation that would be in compliance with subparagraphs (A) or (B) of section 902(a)(2); and
>
> (2) that the nationals, domiciliaries and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) that issuing the order would promote the purposes of this chapter and international

comity with respect to the protection of mask works."

On March 7, 1989, a petition for the issuance of an interim order under 17 U.S.C. section 914 was submitted to the Commissioner by the Austrian Patent Office on behalf of the Austrian Government. The petition, in the form of a letter from Dr. Josef Fichte (President of the Austrian Patent Office) and a copy of the Austrian Federal Law of June 23, 1988 on the Protection of the Topographies of Microelectronic Semiconductor Products is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In remarks reported at 49 Cong. Rec. S12919 (daily ed. October 3, 1984) and 49 Cong. Rec. E4434 (daily ed. October 10, 1984), both Senator Mathias and Representative Kastenmeier suggest that [i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its Government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue * * *. With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity.

The Commissioner is considering issuing an interim order extending the protection of chapter 9 of title 17 of the United States Code to the nationals, domiciliaries, and sovereign authorities of Austria. Written comment on the request of the petitioners and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks on or before 5:00 p.m., April 25, 1989. A public hearing is scheduled for May 4, 1989, at 1:00 p.m. to receive further public comment on this petition.

Date: March 28, 1989.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

Mr. Donald J. Quigg, Commissioner of Patents and Trademarks, United States Department of Commerce, Patent and Trademark Office, Box 4, Washington DC 20231 U.S.A.

Dear Sir, The Austrian Patent Office takes the honor to present a petition in accordance with Section 914 SCPA to issue an order for an interim protection under Chapter 9 with respect to nationals, domiciliaries and sovereign authorities of Austria.

As to the respective requirements which we ask to have evaluated according to Section 902, in respect to the Austrian legal and effective situation we like to communicate the following to you:

Austria has enacted a Federal Law of June 23, 1988, on the Protection of the Topographies of Microelectronic Semiconductor Products (Semiconductor Protection Law) which entered into force on October 1, 1988. The English translation of the text which was furnished in cooperation between WIPO and the Austrian Patent Office, is published in the January review of WIPO "Industrial Property".

The Law gives, upon request, an exclusive right to the creator of a topography defined as a three-dimensional structure of micro-electronic semiconductor products. It provides for a sui generis form of protection modelled along the lines of patent protection, and accords protection on the basis of originality resulting from an intellectual effort on the part of the creator who produced a topography which was not commonplace. Compulsory licenses are not provided for. The effect of the protection shall not extend to acts of reverse engineering (Section 6(2)). The innocent infringer is protected (Section 6 (7)).

The Law provides for a registration system, without examination as to substance. Protection under the Law will be accorded for a maximum period of ten years after the commencement of protection. Among the other provisions are provisions relating to the establishment of a register in the Patent Office, cancellation proceedings to be conducted in the Patent Office, and both civil and criminal court proceedings for infringement.

Protection under the Law is available to both nationals of and residents in Austria and, on a reciprocal basis, to nationsls of, and residents in, States party to an intergovernmental agreement to which Austria is also party, or of States identified in ordinances of the Federal Minister for Economic Affairs (Section 5 (1) and (2)). The Austrian Law does not provide for the possibility of interim extended protection. After the reciprocity has been established the same protection will be granted to foreigners as to Austrian nationals and domiciliaries. Such an extension would be permanent. In this connection the Austrian Government will declare its intention to extend the protection to US mask works by an ordinance of the Federal Minister for Economic Affairs.

We therefore are of the opinion that the statutory criteria for eligibility under section 902(a)(2) SCPA would be met insofar as the protection afforded under the Austrian Law is substantially the same as that provided for under the SCPA.

Austria is not only one of the first European Countries having enacted a law taking into account the international standards in this field but it also took an active part on the preparatory work in respect to the Diplomatic Conference in Washington in May 1989, and will be represented in this conference in order to cooperate in finding solutions for all acceptable.

Having demonstrated this situation in view to make evidence that Austria has been making good faith efforts and reasonable progress as required in Section 914 we would ask you to find the initiation of an evaluation for the issuance of a Section 902 proclamation in favor of owners of mask works who are Austrian nationals, domiciliaries or sovereign authorities appropriate.

*Encl.*

Yours sincerely,

Dr. Josef Fichte,

*President of the Austrian Patent Office.*

**AUSTRIA**

**Federal Law of June 23, 1988, on the Protection of the Topographies of Microelectronic Semiconductor Products**

*(Semiconductor Protection Law)* [1]

*Table of Contents* [1]



[1] Added by WIPO.

[1] *German title:* Bundesgsetz vom 23. Juni 1988 iiber den Schutz der Topographien von mikroelektronischen Halbleitererzeugnissen (Halbleiterschutzgesetz—HlSchG).

*Source: Bundesgesetzblatt fur die Republik Österreich* (BGBl.), July 15, 1988, p. 2629.

*Entry into force:* October 1, 1988.

**Subject of Protection**

1.—(1) Protection under this Federal Law may be obtained, upon request, for three-dimensional structures of microelectronic semiconductor products (topographies) if and insofar as they are original (Section 2).

(2) The protection of a topography of a semiconductor product under subsection (1) shall not apply to the concepts, processes, systems, techniques or stored information contained in the topography, but only to the topography as such.

**Originality**

2.—(1) A topography shall be original if it is the result of its creator's own intellectual effort and is not commonplace in semiconductor technology.

(2) A topography consisting of an arrangement of portions that are commonplace in themselves shall nevertheless be protected insofar as the arrangement is original as a whole.

**Right to Protection**

3.—(1) The right to semiconductor protection shall belong to the creator of the topography.

(2) If the topography has been created in the course of employment or otherwise on commission of another person, the right to semiconductor protection shall belong, where not otherwise agreed, to the employer or the person who has given the commission.

(3) Where the person entitled under subsections (1) or (2) is unable to assert his right for failure to satisfy the requirements of Section 5 and where the topography has not previously been commercially exploited by another person or has only been exploited confidentially, the right shall belong to the person who has received from the entitled person an exclusive authorization to commercially exploit the topography for the first time in the country other than confidentially. Assertion of such right through an application shall cause the right based on subsections (1) and (2) to lapse.

(4) The right to semiconductor protection (subsections (1) to (3)) shall be assignable.

**Lapse of Right**

4. The right shall lapse 15 years after the day of first fixation if the topography has up to that date been neither

1. commercially exploited, other than confidentially, nor
2. filed with the Patent Office.

**Assertion of Right**

5.—(1) The right to semiconductor protection (Section 3) may only be asserted by Austrian nationals or by natural persons who have their permanent domicile in the country and by legal entities and associations under commercial law that are not incorporated and that possess a real and effective establishment in the country.

(2) Other persons may only assert a right to semiconductor protection if they possess the nationality of the State that affords persons or firms within the meaning of subsection (1) the same protection or if they have their permanent domicile or a real and effective establishment in such State and reciprocity has been established by international agreement or by order published in the Federal Law Gazette by the Federal Minister for Economic Affairs.

**Effect of Protection**

6.—(1) Semiconductor protection shall have the effect that the owner of the right may prohibit others, for commercial purposes, from:

1. reproducing the topography or its independently exploitable portions or producing representations for the manufacture of the topography;
2. offering, putting on the market or distributing, or importing for such purposes, representations for the manufacture of the topography or a semiconductor product containing the topography or its independently exploitable portions.

(2) The effect of protection of the topography shall not extend, in particular, to

1. acts done for non-commercial purposes.
2. reproduction of the topography for the purpose of analysis, evaluation or teaching, or
3. the commercial exploitation of a topography created on the basis of such analysis or evaluation and which is itself original (Section 2).

7. Semiconductor protection shall not have effect with respect to a person who acquires a semiconductor product without knowing or without being assumed to know that it contains a protected topography; as soon as that person knows or is assumed to know that the topography is protected by a semiconductor protection right, he shall be required to pay to the owner of protection, at the latter's demand, for any further commercial exploitation of the previously acquired semiconductor product, an adequate compensation in accordance with the circumstances. The owner of protection shall be entitled to require the rendering of accounts in accordance with Section 151 of the Patent Law 1970 (BGBl. No. 259).[1]

**Commencement and Duration of Protection**

8.—(1) Protection shall commence on the day of the first commercial exploitation, other than confidential, of the topography, if the latter is filed with the Patent Office within two years or on the day of filing with the Patent Office, if the topography has not been previously exploited commercially, or has only been exploited confidentially.

(2) Protection shall terminate at the latest on expiry of the tenth calendar year after the year of commencement of protection.

(3) Protection can only be enforced once the semiconductor protection right has been entered in the Semiconductor Register.

**Application Requirements**

9.—(1) Applications in respect of topographies shall be filed in writing with the Patent Office. A separate application shall be filed for each topography.

(2) The application shall contain:

1. a request for registration of protection of the topography in the Semiconductor Register and a brief and precise designation thereof (title);
2. materials identifying or illustrating the topography or a combination thereof and, in addition, where appropriate, the semiconductor product itself;
3. the day of first commercial exploitation, other than confidential, of the topography, where such day is earlier than the application; and
4. particulars from which the right to semiconductor protection under Section 3(3) results and particulars concerning the entitlement to assert the right (Section 5).

(3) The request shall be subject to a fee of 3,000 schillings.

(4) The detailed requirements for application as well as the materials to be furnished shall be laid down in a decree issued by the Federal Minister for Economic Affairs, whereby attention shall be paid to introducing provisions that are as effective, speedy, simple and economic as possible and that take into account the needs of the semiconductor industry and the current status of technical development.

**Semiconductor Register**

10.—(1) Where the application complies with the requirements of Section 9 and of the decree under that Section, the semiconductor protection right shall be entered in the Semiconductor Register kept by the Patent Office, without further examination.

(2) The Semiconductor Register shall contain the number, title, filing date and, where appropriate, the date of first commercial exploitation, other than confidential, of the topography (Section 9(2)3) as well as the name and place of residence of the owners of protection and of their representatives. The commencement, expiry, nullity, lack of title and transfer of rights of protection, grant of licenses, liens and other rights *in rem*, restoration of rights, declaratory statements and disputes shall also be entered in the Register.

(3) Any person may inspect the Semiconductor Register.

(4) The detailed provisions on the Semiconductor Register shall be laid down in a decree issued by the Federal Minister for Economic Affairs, whereby the maintenance of industrial and business secrets and also the need for public information shall be taken into account.

(5) The materials filed in accordance with Section 9(2)2 and, where appropriate, the semiconductor product itself shall be kept for a period of six years after the end of semiconductor protection. On expiry of this period, the last owner of protection entered in the Semiconductor Register shall be given a time limit to recover the materials and, where appropriate, the semiconductor product. If he does not comply within the time limit, the materials and, where appropriate, the semiconductor product shall be destroyed by the Patent Office.

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[1] *See Industrial Property Laws and Treaties*, AUSTRIA—Text 2-001.

(6) Where an application does not lead to entry in the Semiconductor Register, the period of storage shall be one year computed from the date on which the refusal decision takes force.

**Publication**

11. Entries in the Semiconductor Register (Section 10(2)) shall be published in the Patent Gazette [*Patentblatt*].

**Transfer; Licenses**

12. (1) A semiconductor protection right may be transferred as a whole or conceptual in shares. It shall be inheritable; it shall not pass to the State.

(2) Any transfer shall be entered in the Semiconductor Register and shall become effective on entry.

(3) License rights may be acquired in respect of a semiconductor right. License rights shall be entered, upon request, in the Semiconductor Register; through the entry they shall be effective also in respect of third parties.

(4) The provisions of Section 27 and 37 of the Patent Law 1970 shall otherwise apply *mutatis mutandis*.

**Declaration of Nullity**

13. (1) Any person may request that a specifically designated semiconductor right be declared null and void if

1. the protected topography was not protectable (Sections 1 and 2),

2. the right to semiconductor protection under Section 4 had lapsed or the time limit for application (Section 8(1)) had lapsed without use having been made of it,

3. entitlement to assert the right (Section 5) was lacking or subsequently ceased to apply, or

4. the materials under Section 9(2)2 did not correspond to the semiconductor product where filed.

(2) The final declaration of nullity shall be retroactive to the commencement of protection (Section 8(1)); where the declaration of nullity is based on the fact that entitlement to assert the right has ceased to apply (subsection (1)3), the final declaration of nullity shall be retroactive to the time at which the semiconductor right became contestable.

**Declaration of Lack of Title**

14. (1) The owner shall be declared to lack title to the semiconductor right if it is proven that he was not entitled to claim the grant of such right (Section 3).

(2) only the person having the claim to the protection right shall have a claim to declaration of lack of title in respect of the semiconductor right and such a claim shall become statute-barred against a *bona fide* owner of protection after three years of the date of entry in the Semiconductor Register.

(3) Where the applicant's claim is allowed, he may, within one month of the decision becoming final, request transfer of the semiconductor right to himself, subject to his being entitled to assert the right to semiconductor protection (Section 5).

(4) Failure to request such transfer in good time shall be deemed equivalent to renunciation of the semiconductor right.

**Requests for Declaration**

15. (1) Anyone who commercially exploits a topography, particularly by offering, putting on the market, distributing, or importing for such purposes, a semiconductor product containing a topography, or who intends to carry out such acts, may request the Patent Office to issue a declaration against the owner of a semiconductor right or the exclusive licensee that the topography or the semiconductor product containing such topography is neither in whole nor in part subject to the semiconductor right (Section 6).

(2) The owner of a semiconductor right or the exclusive licensee may request the Patent Office to issue a declaration against anyone who commercially exploits a topography, in particular who offers, puts on the market, distributes, or imports for such purposes, a semiconductor product containing such topography, or who intends to carry out such acts, that the topography or the semiconductor product containing such topography is subject in whole or in part to the semiconductor right (Section 6).

(3) Requests under subsections (1) and (2) shall be refused where the person opposing the request proves that infringement proceedings between the same parties, concerning the same topography, instituted prior to presentation of the request for a declaration are pending before a court (Section 21).

(4) A request for a declaration may only relate to a single semiconductor right. The request must be accompanied by materials within the meaning of Section 9(2)2 and, where appropriate, also by the semiconductor product itself, in four copies. One copy of the materials and, where appropriate, of the semiconductor product shall be attached to the final decision.

(5) In assessing the scope of protection of the semiconductor right that is the subject matter of the declaratory proceeding, the Patent Office shall take into account the state of the art proven by the parties.

(6) Where the behavior of the opposing party has not given reason for the filing of the request and that party has recognized the claim within the period of time stipulated for the reply, the cost of proceedings shall be borne by the requesting party.

**Competence**

16.—(1) The Semiconductor Register shall be kept by the Patent Office.

(2) The decision on entry in the Semiconductor Register (section 10) shall be taken by the technical member competent according to the distribution of responsibilities.

(3) Decisions in matters relating to granted semiconductor rights shall be taken, except where the courts, the Supreme Patent and Trademark Chamber or the Appeals Section or the Nullity Section of the Patent Office are competent, by the legal member of the Legal Section competent according to the distribution of responsibilities.

(4) The Appeals Section and the Nullity Section shall take their decisions composed of three members, one of whom shall preside. The presiding member and one further member must be legally qualified.

(5) Sections 58 to 61 and 74, 75, and 76 (1), (4) and (5) of the Patent Law 1970 shall apply.

**Procedure**

17. Where not otherwise stipulated, sections 52 to 56, 64, 66 to 73, 77 to 79, 82 to 86, 112 to 126, 127 (1), (2), (4) and (5), 128, first sentence, 129 to 145, 168 and 169 of the Patent Law 1970 shall apply *mutatis mutandis* to procedure; the procedural fee laid down in section 132(1)(*b*) of the Patent Law 1970 shall correspond to the application fee in patent proceedings.

**Inspection of Files**

18. (1) The parties to proceedings shall be entitled to inspect files relating to the proceedings.

(2) Any person may inspect files concerning granted semiconductor rights—with the exception of records of deliberations and those parts of the files relating to internal business—, subject to the following provisions. Such inspection shall also apply to the materials and, where appropriate, to the semiconductor product itself filed with the application under section 9(2)2, with the proviso, however, that inspection of materials that contain industrial or commercial secrets and have been designated as such by the applicant in the application shall only be granted in nullity, lack of title or delcaration proceedings on the instructions of the Nullity Section or in a legal dispute concerning the infringement of the semiconductor right on the instructions of the court, in respect of persons who are party to the nullity, lack of title or declaration proceedings or to the legal dispute. Materials required to identify or illustrate the topography may not be designated as a whole as industrial or commercial secrets.

(3) Secrecy under subsection (2) shall not prevent inspection of files by that person against whom the owner of protection has invoked his right.

**Representation**

19. The provisions of section 21 of the Patent Law 1970 shall apply to representation in proceedings before the Patent Office and before the Supreme Patent and Trademark Chamber.

**Obligation to Furnish Information**

20. Any person who designates articles in such a way as to create the impression that they enjoy semiconductor protection shall be required, on request, to provide information on the right on which the designation is based.

**Infringement of Semiconductor Rights**

21. (1) Any person who has suffered an infringement of his semiconductor right (section 6) may take action under sections 147 to 154 and 164 of the Patent Law 1970, applied *mutatis mutandis*, for injunction, removal, publication of judgment, appropriate compensation, damages, surrender of profit and rendering of accounts. Any person who has reason to suspect such infringement may also institute action for injunction and for publication of judgment.

(2) Injunction orders can be issued even where they do not fulfill the requirements of section 381 of the Injunctions Code. Where reasonable grounds exist, the court may

withdraw an injunction it has issued if the defendant provides adequate security.

22. (1) Any person who infringes a semiconductor right (section 6) shall be condemned by the court to a fine of up to 360 daily amounts.

(2) The same penalty shall be imposed on the owner or director of an enterprise who does not prevent the infringement of a semiconductor right by a person working for him or on his behalf in the course of the activities of the enterprise. Where the owner of the enterprise is a legal entity, this provision shall apply to those organs of the enterprise that have committed such omission. The enterprise shall be jointly and equally liable with the guilty party for the fines inflicted on the organs.

(3) Prosecution shall take place only at the request of the injured party.

(4) In penal proceedings, sections 160 and 161 of the Patent Law 1970 shall apply *mutatis mutandis*.

**Competence**

23. (1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and injunctions under this Federal Law. Decisions shall belong to the Chamber (section 7(2), first sentence, section 8(2) of the Jurisdictional Rules), irrespective of the value in dispute. This shall also apply to injunctions.

(2) Jurisdiction in criminal matters under this Federal Law shall belong to the Vienna District Court for Criminal Matters *[Landesgericht für Strafsachen Wien]*.

**Preliminary Questions**

24. (1) Sections 156 and 157 of the Patent Law 1970 shall apply *mutatis mutandis*, subject to subsection (2), in assessing the validity or effectiveness of a semiconductor right on which an infringement action is based.

(2) Section 156(3) of the Patent Law 1970 shall apply with the restriction that proceedings shall only be interrupted if nullity is claimed on the basis of section 13(1)1 or 4.

**Relationship to the Copyright Law**

25. The commercial exploitation of topographies shall not be affected by copyright in works of literature under section 2(3) of the Copyright Law (BGB1. No. 111/1936) and neighboring rights for photographs under section 73 of the Copyright Law.

**Citations**

26. The Federal law provisions cited in this Federal Law shall be applied in their currently valid version.

**Entry into Force**

27. (1) This Federal Law shall enter into force at the start of the third month following its publication.

(2) Decrees based on this Federal Law may be issued as from the day following its publication. However, they may not enter into force until this Federal Law enters into force.

**Implementation**

28. The following shall be responsible for implementing this Federal Law:

1. With respect to section 17, where application *mutatis mutandis* of section 168(6) of the Patent Law 1970 is provided for, the Federal Minister for Economic Affairs, in consultation with the Federal Minister for Finance.

2. With respect to sections 21 to 24, the Federal Minister for Justice, in consultation with the Federal Minister for Economic Affairs,

3. With respect to all other provisions of this Federal Law, the Federal Minister for Economic Affairs.

[FR Doc. 89-7995 Filed 4-3-89; 8:45 am]

BILLING CODE 3510-16-M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Termination

**SUMMARY:** In accordance with section 1536(h) of Pub. L. 98-525 (as amended), the Commission on Merchant Marine and Defense ceased to exist on 31 March 1989. As of that date, the Commission's staff was dissolved and its offices were closed. In Accordance with the provisions of section 1536 of Pub. L. 98-525 (as amended), the Commission was constituted in December 1986. The Commission's mandate was to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. The Commission completed the tasks required of it by law with the submission of its fourth report to the President and Congress on February 16, 1989.

### Successor Organizations

The substantive records of the Commission, including copies of minutes and all other materials required to be maintained by the Federal Advisory Committee Act, Pub. L. 92-463, as amended, as well as all other public records of the Commission, have been transferred to the National Archives and Records Service. Office equipment and financial records have been transferred to the Office of the Assistant for Administration, Under Secretary of the Navy.

### Financial Obligations

Individuals or organizations having a claim arising from a proper obligation of Commission funds before March 31, 1989, should submit invoices and other documentation to the Assistant for Administration, Office of the Under Secretary of the Navy, Room 4C748, The Pentagon, Washington, DC 20350-1000.

### Publications

Publications of the Commission are available at federal depository libraries, and some may be obtained by purchase from the Superintendent of Documents. Publications currently available are:

*Public Hearings before the Commission on Merchant Marine and Defense: February 1987-July 1987*

Stock Number 040-000-00519-6, $31.00

*Second Report of the Commission on Merchant Marine and Defense: Recommendations*

Stock Number 040-000-00525-1, $2.00

*Third Report of the Commission on Merchant Marine and Defense: Findings of Fact and Conclusions*

Stock Number 040-000-00532-3, $4.00

*Third Report of the Commission on Merchant Marine and Defense: Appendices*

Stock Number 040-000-00533-1, $14.00

*Fourth Report of the Commission on Merchant Marine and Defense: Recommendations, "A Plan for Action"*

Stock Number 040-000-00534-0, $2.50

*Public Hearings Before the Commission on Merchant Marine and Defense: May 1988 and July 1988*

Stock Number 040-000-00540-4, $25.00

*Public Hearings Before the Commission on Merchant Marine and Defense: July 1988-December 1988*

Stock Number 040-000-00541-2, $20.00

### Other Information

Since neither the Commission nor its staff exists after March 31, 1989, there is no individual or organization who can respond on behalf of the Commission to inquiries about the Commission's work. Individuals may make inquiry of the National Archives and Records Service about access to the Commission's records.

Contact person: CDR Bryan Hrabosky, SC, USN, Suite 503, 4401 Ford Avenue, Alexandria, Virginia 22302, Telephone (703) 756-0411.

**Allan W. Cameron,**

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 89-7884 Filed 4-3-89; 8:45 am]

BILLING CODE 3820-01-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Parent's/Parent-In-Law's Optional Dependency Certification; AF Form 1985; and OMB Control Number 0701–0108.

*Type of Request:* Extension.

*Average Burden Hours/Minutes Per Response:* .25 hours.

*Frequency of Response:* One response per respondent.

Number of Respondents: 1,800.

*Annual Burden Hours:* 450.

*Annual Responses:* 1,800.

*Needs and Uses:* Form is used under certain circumstances to certify dependency of parents or parents-in-law upon service member or retired member for entitlement to basic allowance for quarters with-dependent rate, travel, or ID card privileges.

*Affected Public:* Individuals or households.

*Frequency:* Continuing.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer: Dr. J. Timothy Sprehe*

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7970 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Parent's/Parent-In-Law's Dependency Statement; AF Form 452; and OMB Control Number 0701–0111.

*Type of Request:* Reinstatement.

*Average Burden Hours/Minutes Per Response:* 1 hour.

*Frequency of Response:* One response per respondent.

Number of Respondents: 2,500.

*Annual Burden Hours:* 2,500.

*Annual Responses:* 2,500.

*Needs and Uses:* Form is used to obtain information from parents or parents-in-law to determine dependency upon service member, retired member, or surviving spouse for entitlement to basic allowance for quarters with-dependent rate, travel, or ID card privileges.

*Affected Public:* Individuals or households.

*Frequency:* Continuing.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Dr. J. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7971 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Student's Dependency Statement; AF Form 1984; and OMB Control 0701–0109.

*Type of Request:* Reinstatement.

*Average Burden Hours/Minutes Per Response:* 1 hour.

*Frequency of Response:* One response per resident.

*Number of Respondents:* 900.

*Annual Burden Hours:* 900.

*Annual Responses:* 900.

*Needs and Uses:* Form is used to obtain information to verify dependency of college student upon service member, retired member, or surviving spouse for entitlement to ID card privileges.

*Affected Public:* Individuals or households.

*Frequency:* Continuing.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7972 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This is a new requirement.

*Title, Applicable Form, and Applicable OMB Control Number:*

DoD FAR Supplement, Part 227, Patent—Reporting of Subject Inventions, No Form; No OMB Control Number.

*Type of Request:* New Collection.

*Average Burden Hours/Minutes Per Response:* .08 Hours.

*Frequency of Response:* Annually.

*Number of Respondents:* 190.

*Annual Burden Hours:* 182.

*Annual Responses:* 2,280.

*Needs and Uses:* This request concerns information collection and recordkeeping requirements related to Reporting of Inventories.

*Affected Public:* Business or other for-profit.

*Respondent's Obligation:* Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7973 Filed 4–3–89; 8:45 am]

**BILLING CODE 3801–01–M**

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:*

DoD FAR Supplement, Part 235, Research & Development Contracting; DD Forms 2222 and 2222–2; and OMB Control Number 0704–0262.

*Type of Request:* Extension.

*Average Burden Hours/Minutes Per Response:* 1.9 Hours.

*Frequency of Response:* On occasion.

*Number of Respondents:* 13,100.

*Annual Burden Hours:* 25,200.

*Annual Responses:* 13,100.

*Needs and Uses:* This request concerns information collection requirements related to research and development contracting including short form R&D Contracting.

*Affected Public:* Businesses or other for-profit.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7974 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

## Office of the Secretary

## DIA Advisory Board; Closed Meeting

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, a amended by section 5 of Pub. L. 94–409, notice is hereby given that closed meeting of a panel of the DIA Advisory Board has been changed as follows: The 13 April 1989 meeting has been relocated to the address listed below.

**ADDRESS:** The Foreign Science and Technology Center, Charlottesville, VA.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7975 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

## DIA Advisory Board; Closed Meeting

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

**DATE:** Tuesday, 11 April 1989, 9:00 a.m. to 5:00 p.m.

**ADDRESS:** The DIAC, Bolling AFB, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328, (202 373–4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 30, 1989.

[FR Doc. 89–7976 Filed 4–3–89; 8:45 am]

**BILLING CODE 3810–01–M**

## Department of the Army

## Billing Procedures

**AGENCY:** Military Traffic Management Command (MTMC).

**ACTION:** Amend billing procedures on selected traffic by all methods of transportation.

**SUMMARY:** A Notice published in the **Federal Register** (54 FR 54) "Billing Procedures on Selected Traffic by All Methods of Transportation" has been reviewed and DOD is modifying the billing procedures. This document established for all modes of traffic to cover GBLs for which the total charges are $10,000 or more is being amended to require when: "Total charge(s) are

$8,000 or more". All other provisions of the Notice as originally published remain unchanged.

**EFFECTIVE DATE:** April 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Lamm, Headquarters, Military Traffic Management Command. ATTN: MT–INFQ, 5611 Columbia Pike, Falls, Church, Virginia 22041–5050, or telephone (202) 756–1173.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 89–7860 Filed 4–3–89; 8:45 am]

**BILLING CODE 3710–08–M**

## Military Traffic Management Command; Certification of Independent Pricing

**AGENCY:** Military Traffic Management Command (MTMC).

**ACTION:** Notice and request for comments.

**SUMMARY:** MTMC will require all carriers desiring to compete for transportation of Department of Defense passenger, freight, or personal property traffic to execute the following revised certification of independent pricing. MTMC will provide the certification form to carriers by incorporating it into a new uniform rate tender format, or in loose-leaf supplement to tenders, or into MTMC's letter-invitations for rates or fares, or by other means. Failure of a carrier to submit a properly executed certification with its tender, rates, or fares will result in rejection by MTMC of the carrier's tender, rates, or fares.

**DATES:** Effective on April 4, 1989. Comments must be received on or before May 4, 1989.

**ADDRESS:** Send or deliver comments to: Commander, Military Traffic Management Command; ATTN: MTJA; 5611 Columbia Pike, Room 405; Falls Church, VA 22041–5050.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Dowell (Contract Attorney) or Mr. Michael E. Giboney (Supervisory General Attorney), 703–756–1580.

**SUPPLEMENTARY INFORMATION:** The certifications of independent pricing heretofore used by MTMC for non-FAR acquisitions of transportation services have varied from program to program and might not have been adequate to deter certain types of collusive activities by carriers. This revision strengthens provisions designed to proscribe collusive practices by carriers while it also standardizes requirements for the various MTMC transportation programs. The full text of the interim filing requirement is set forth below.

### Certification

(a) For the purpose of inducing the United States to accept these tendered rates or fares, the person who signs this certificate declares on behalf of himself and on behalf of the carrier tendering these rates or fares, with the understanding that a false statement is a violation of law subject to criminal and civil penalties, that the following is true:

(1) The rates or fares in this tender (or magnetic tape) have been arrived at unilaterally and independently. Also, there has been no communication—sent or received—, consultation, agreement nor understanding with any carrier, competitor, or agent thereof as to any matter relating to this tender (or magnetic tape).

(2) The rates or fares or other information submitted in this tender (or magnetic tape) have not and will not be disclosed to any other carrier, competitor, or agent thereof. If required by law to be filed with a government agency, disclosure will be made only by that agency.

(3) No action has been or will be taken, and no agreement or understanding has been or will be made, with any other carrier, competitor, or agent thereof to:

(i) Submit or not to submit rates or fares; or

(ii) Change, cancel, or withdraw rates or fares; or

(iii) File the same or prearranged rates or fares; or

(iv) Pool United States traffic or revenues; or

(v) Restrict competition for United States traffic by any means or device.

(b) This certificate does not prohibit discussions concerning this tender (or magnetic tape) between a freight forwarder and its underlying carriers, between a carrier and its agents providing underlying transportation service or equipment, or between or among interlne carriers jointly participating in this tender.

(c) The signature in this certificate is considered to be a certification by the signatory that the signatory:

(1) Is a person in the carrier's organization authorized in writing to sign this certificate on behalf of the carrier and is responsible for determining the rates or fares being offered in this tender (or magnetic tape), and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above and is without knowledge, after investigation, that any other person has taken such action; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above _____,

(print or type full name of person(s) in the carrier's organization responsible for determining the rates or fares offered in this tender or magnetic tape, and the title of his or her position in the carriers's organization); and

(ii) As an authorized agent, does certify that the principals named in subdivision (c)(2i) above have not participated and will not participate, in any action contrary to subparagraphs (a)(1) thorugh (a)(3) above; and

(iii) As an authorized agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

Signature:_____

Print or type name:_____

Title:_____

Date:_____

**John O. Roach, II**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 89–7861 Filed 4–3–89; 8:45 am]

**BILLING CODE 3710–08–M**

## Corps of Engineers, Department of the Army

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Master Plan Update for the Hansen Dam Flood Control Basin, Los Angeles County, CA

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:**

### 1. Proposed Action

The Los Angeles District will prepare a Master Plan that will provide guidance for the use, development and management of the natural & constructed resources of the Hansen Dam project area. The U.S. Army Corps of Engineer's Hansen Dam project area is a 1,450-acre flood control basin. The Master plan process (1) will evaluate all resources, including, but not limited to biological, cultural, recreational and aesthetic; (2) will evaluate the need for recreational development; (3) will evaluate land suitability for recreational development; (4) will develop alternatives for land uses and facilities; and (5) will propose a recommended master plan for recreation and resource use. The Master plan will also consider the expansion of existing equestrian/hiking trails, sports fields and picnic facilities as well as examine the land use suitability for an 8 to 10 acre freshwater lake and concession facilities.

### 2. Alternatives

Alternatives will be developed during the Master planning process based on environmental resources, land use suitability, and public input.

**3. Scoping Process**

An extensive mailing list is being developed which includes Federal, State and local agencies and other interested public and private organizations and parties.

A scoping meeting and public workshop will be held April 4, 1989, at 7:00 p.m., at the Lakeview Terrace Recreation Center, 11075 Foothill Blvd., Lakeview Terrace, California 91342.

Each entity on the mailing list will receive a copy of the scoping public notice which will have details on the proposed studies and dates of public scoping meetings. Formal coordination with appropriate Federal, State and local agencies will be conducted according to the requirements of the National Environmental Policy Act.

The specific date, time and location of the scoping meeting will be posted at local community facilities and published in the local newspaper.

**4. Potentially Significant Issues**

Potentially significant issues identifies include impacts to endangered species, riparian vegetation, recreation, land use, and cultural resources.

**5. Availability of EIS**

The draft EIS is expected to be available to the public in fall 1989.

**6. Comments**

Comments and questions regarding the project may be addressed to U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Brian Whelan or Ms. Raina Fulton, CESPL-PD-RL, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-0240 or (213) 894-5510.

**Tadahiko Ono,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 89-7859 Filed 4-3-89; 8:45 am]

BILLING CODE 3710-KF-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Intent To Award Grant to Frank W. Hochmuth

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15437 to Mr. Frank W. Hochmuth to develop and test his invention, "Steam Generator with Integral Downdraft Dryer."

**Scope**

This Grant will aid in providing funding for a comprehensive well-integrated plan as follows: 1) Performance of the cold flow tests of fuel distribution in order to accurately determine dryer design parameters; 2) a cost/benefit analysis to estimate the effects of the incorporation of a dryer into existing boilers; 3) runs of a computer program previously developed to predict dryer performance; and 4) a market survey.

The purpose of this project will be the reduction of auxiliary fuel requirements through the use of the Integral Downdraft Dryer. The anticipated objective is to reduce the fuel requirements for a typical waste wood fueled steam generator by at least 50 percent.

**Eligibility**

Based on receipt of an unsolicited application, eligibility of this award is being limited to Mr. Frank W. Hochmuth, a Registered Professional Engineer in the states of Maine and Connecticut. Mr. Hochmuth is the inventor of the Steam Generator with Integral Downdraft Dryer and the patent holder for the design. Mr. Hochmuth has nearly fifty years of experience and holds 24 patents related to steam boilers and heat transfer equipment. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption

The term of this grant shall be two years from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89-7979 Filed 4-3-89; 8:45 am]

BILLING CODE 6450-01-M

### Financial Assistance Award; Intent To Award Grant to Montana State University

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE-FG01-89CE15427 to Montana State University.

**Scope**

The funding for this grant will aid in designing and constructing a bench-scale reactor and operate it to obtain various data relating to the steam hydrolysis of fats.

The purpose of this project is to replace expensive high pressure technology by accomplishing fat hydrolysis with low pressure dry steam.

**Eligibility**

Based on receipt of an unsolicited application, eligibility of this award is being limited to Montana State University, because of its high qualifications in this specialized field of technology. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be twenty-four (24) months from the effective date of this award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89-7982 Filed 4-3-89; 8:45 am]

BILLING CODE 6450-01-M

### Financial Assistance Award; Intent To Award Grant to Richard Raney

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE-FG01-89CE15442 to Richard Raney.

**Scope**

The funding for this grant will allow the grantee to build six drill bit/stabilizer prototypes, two each of three different kinds and test them downhole in an operating oil well.

The purpose of this project is to proliferate drilling in oil and gas wells. Faster drilling rates of these drill bits would lower the overall drilling time and enhance productivity.

**Eligibility**

Based on receipt of an unsolicited application, eligibility of this award is

being limited to Richard Raney, President of Sta-Bit, Inc., a company incorporated for the purpose of developing and marketing this invention. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be twenty-four (24) months from the effective date of this award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89–7981 Filed 4–3–89; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award; Intent To Award Grant to S–V Technology, Inc.

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE–FG01–89CE15423 to S–V Technology, Inc.

### Scope

The funding for this grant will aid in designing, developing and building two prototypes and testing them at Sandia National Laboratory in Albuquerque.

The purpose of this project is to synthesize nearly sinusoidal output waveform with low total harmonic distortion over a wide range of load conditions. This characteristic, especially when operating at low loads, means increased efficiency, which is its particular advantage over conventional inverters.

### Eligibility

Based on receipt of an unsolicited application, eligibility of this award is being limited to S–V Technology, Inc. a company incorporated in 1985 to market the invention. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of this grant shall be twenty-four (24) months from the effective date of this award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89–7980 Filed 4–3–89; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award; Intent To Award a Grant to United Nations Institute for Training and Research New York, NY

**AGENCY:** U.S. Department of Energy, Bartlesville Project Office.

**ACTION:** Notice of noncompetitive financial assistance (Grant) award.

**SUMMARY:** The Department of Energy, Bartlesville Project Office announces that pursuant to 10 CFR 600.7(b)(2), it intends to make a noncompetitive financial assistant (grant) award through the Pittsburgh Energy Technology Center to United Nations Institute for Training and Research, New York, NY 10017 for "International Center for Heavy Oil and Tar Sands."

### Scope

The proposed research effort is to promote and facilitate the exchange of technical information on matters relating to the heavy crude and tar sands on a world-wide basis, to publish special studies on particular topics related to heavy crude and tar sands, and to assess research in heavy crude and tar sands and guide countries in developing their energy potential.

This grant is in support of UNITAR for the UNITAR/UNDP Information Center for Heavy Oil and Tar Sands. DOE was a cofunder of the Center with UNITAR, AOSTRA (Canada) and PDVSA (Venezuela)in 1981.

The establishment of the UNITAR/UNDP Information Center for Heavy Oil and Tar Sands has facilitated international cooperation among countries for solutions to common technological problems and technology transfer. Huge resources of heavy oil and tar sands exist worldwide including in the United States. As light oil resources become depleted, the world will shift emphasis to the heavy oil and tar sands resources.

The term of this grant is for a thirty-six (36) month period at an estimated value of $375,000. The DOE share is anticipated at 25,000 for the first year, and a total of 75,000 for the full three years. Both Canada and Venezuela are committed to providing 50,000 for each of the three years, for a total of $150,000 for each nation.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Cynthia Mitchell, Telephone: (412) 892–4862.

Date: March 23, 1989.

**Gregory J. Kawalkin,**

*Director, Acquisition and Assistance Division (Acting).*

[FR Doc. 89–7983 Filed 4–3–89; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award; Intent To Award Grant to Stanley Widmer

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE–FG01–89CE15413 to Stanley Widmer.

### Scope

The funding for this grant will allow the grantee to complete the development of a non-metallic railroad switch cover.

The purpose of this project is to substantially reduce the deposition of moisture, ice and snow on railroad switches during winter storms and reduce heating requirements for the prevention of switch freeze-up.

### Eligibility

Based on receipt of an unsolicited application, eligibility of this award is being limited to Stanley Widmer, President of Widmer Associates, Inc. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption. There is no similar device on the market.

The term of this grant shall be twenty-four (24) months from the effective date of this award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis

Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89–7984 Filed 4–3–89; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–354a–7]

### Science Advisory Board; Radiation Advisory Committee; Open Meeting—April 26–28, 1989

Under Pub. L. 92–463, notice is hereby given that the Radiation Advisory Committee of the Science Advisory Board will meet April 26–28, 1989 at the U.S. Environmental Protection Agency's Headquarters, 401 M Street, SW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday and adjourn no later than 5:30 p.m. on Friday. On the 26th and 28th the meeting will be held in Room 1103 West Tower. On the 27th, writing sessions will be held in two smaller rooms in the West Tower—Room 908 and Room 227.

At this meeting the Radiation Advisory Committee will review the Background Information Document (BID) for the rulemaking on Radionuclides NESHAPS Volumes I and I. The Committee has also been provided with, and may comment upon, documents and discs for Determining Compliance with the Clean Air Act Standards. Copies of these documents are available from the Office of Radiation Programs as described in the March 7, 1989 **Federal Register** Volume 54, Number 43, pages 9612–9668. Single copies of the Radiation Advisory Committee recent reports on the Agency's plans to revise the BID are available free of charge from the Science Advisory Board by requesting reports SAB–RAC–88–041, SAB–RAC–88–042, and EPA–SAB–RAC–89–003.

Generally speaking, the first day will include briefings by Agency staff, public comment, and committee discussion. The Committee will write most of the second day. The third day will be spent editing, presenting the Committee's preliminary findings and conclusions, and discussing them with the Agency. The Committee hopes to complete and approve its report on April 28th for transmission to the Science Advisory Board's Executive Committee shortly thereafter.

The Committee may also discuss its plans for future activities.

The meeting is open to the public; however, seating is limited. Members of the public wishing to attend, provide oral public comment, or have written comment sent to the Committee in advance of the meeting should call Mrs. Kathleen Conway, or Mrs. Dorothy Clark, Staff Secretary, at (202) 382–2552 by noon April 19.

**Donald G. Barnes,**

*Director, Science Advisory Board.*

Date: March 29, 1989.

[FR Doc. 89–7938 Filed 4–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3549–6]

### Zenith Chemical Company Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Zenith Chemical Company Site, Dalton, Georgia, with John Biddle and the Spartan Trading Company. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper or inadquate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Investigations Support Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above by thirty (30) days from date of publication.

Date: March 28, 1989.

**Greer C. Tidwell,**

*Regional Administrator, U.S. EPA—Region IV.*

[FR Doc. 89–7939 Filed 4–3–89; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Radio Advisory Committee Meeting

March 28, 1989.

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 9:30 a.m., Tuesday, April 18, 1989, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

At this meeting the Committee will conduct a general review of the AM and FM technical and allocation policies currently under consideration by the Federal Communications Commission, and discuss the role of the Advisory Committee in these matters.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for April, 18, 1989 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632–6485.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–7904 Filed 4–3–89; 8:45 am]

BILLING CODE 6712–01–M

### Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | MM Docket No. |
|---|---|---|---|
| A. Lincoln Broadcasting, Inc. | Lincoln, NE. | BPH–871029MB | 89–67 |
| B. Space-Com, Inc. | Lincoln, NE. | BPH–871029MM | |
| C. Star Broadcasting, Inc. | Lincoln, NE. | BPH–871029ME | |
| D. Leer Broadcasting, Inc. | Lincoln, NE. | BPH–871029MG | |
| E. Cornhusker State FM Associates. | Lincoln, NE. | BPH–871029MJ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue Heading | Applicant(s) |
|---|---|
| 1. Air Hazard | C,D,E |
| 2. Financial | D |
| 3. Comparative | All |
| 4. Ultimate | All |

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 89–7956 Filed 4–3–89; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New Collection

*Title:* Modified SF 269A, Financial Status Report, (Short Form), Used for Reporting on FEMA Comprehensive Cooperative Agreements.

*Abstract:* OMB Circular A–102 requires grantees to submit to the grantor Federal agency SF 269A, Financial Status Report, to provide financial information incidental to grant payments under letters of credit or other transfers of funds. Under FEMA's Comprehensive Cooperative Agreement grant program, a State or local government may be funded for up to 12 programs. With the use of the existing SF 269A, the grantee would have to submit a SF 269A for each funded program. The modified SF 269A would allow the grantee to report on up to five funded programs using one report form.

*Type of Respondents:* State or local governments.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 269.

*Number of Respondents:* 224.

*Estimated Average Burden Hours Per Response:* 1.2.

*Frequency of Response:* Quarterly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 27, 1989.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 89–7916 Filed 4–3–89; 8:45 am]

BILLING CODE 6718-01-M

**[Docket No.: FEMA–REP–4–NC–4]**

### North Carolina Radiological Emergency Response Plans Site-Specific to Shearon Harris Nuclear Power Plant

**ACTION:** Certification of FEMA finding and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of North Carolina formally submitted its State and local plans for radiological emergencies site-specific to the Shearon Harris Nuclear Power Plant to the Regional Director of FEMA Region IV for FEMA review and approval on April 29, 1988.

On June 20, 1988, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with Section 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Shearon Harris Nuclear Power Plant; an evaluation of the joint exercises conducted on February 28, 1987, and May 17–18, 1985, in accordance with § 350.9 of the FEMA rule; and a public meeting held on May 19, 1985, to discuss the site-specific aspects of the State and local plans around the Shearon Harris Nuclear Power Plant in accordance with Section 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that in accordance with 44 CFR 350.12 of the FEMA rule, subject to the condition stated below, the North Carolina State and associated local plans and preparedness for the Shearon Harris Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and that they are capable of being implemented.

The condition for the above approval is that the adequacy of the prompt alert and notification system already installed and operational be evaluated by FEMA in accordance with the joint Nuclear Regulatory Commission/FEMA criteria set forth in NUREG–0654/FEMA–REP–1, Rev.1, and in FEMA–REP–10 "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants."

FEMA will continue to review the status of offsite plans and preparedness associated with the Shearon Harris Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–4–NC–4 maintained by the Regional Director, FEMA Region IV, 1371 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: March 28, 1989.

For the Federal Emergency Management Agency.

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 89–7915 Filed 4–3–89; 8:45 am]

BILLING CODE 6718-21-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.
*Agreement No.:* 224–004161–002
*Title:* San Francisco Terminal Agreement
*Parties:* Marine Terminal Corporation, San Francisco Port Commission
Synopsis: The Agreement extends the term of the basic Agreement for a period of ninety days, until June 30, 1989. The agreement also adds a new paragraph 39 which incorporates by reference Chapter 10, Article XIX of the San Francisco Administrative Code, as amended. The agreement also adds a liquidated damages provision.
*Agreement No.:* 224–200230
*Title:* Georgia Ports Authority Terminal Agreement
*Parties:* Georgia Ports Authority, Wilhelmsen A/S
*Synopsis:* The Agreement provides for consolidated per container rates for terminal services. The agreement also provides volume discounts for wharfage. The Agreement's term expires on March 31, 1995.

By Order of the Federal Maritime Commission.

Dated: March 30, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89–7906 Filed 4–3–89; 8:45 am]

BILLING CODE 6730–01–M

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–006190–053
*Title:* United States Atlantic/Venezuela Freight Association
*Parties:* Consorcio Naviero de Occidente, C.A., King Ocean Service de Venezuela, S.A., Venezuelan Container Service, Maritima Aragua, S.A., American Transport Lines, Inc., Companhia Anonima Venezolana De Navegacion
*Synopsis:* The proposed modification would permit the parties to charter space to one another on vessels owned or operated by them.
*Agreement No.:* 202–010689–036
*Title:* Transpacific Westbound Rate Agreement
*Parties:* American President Lines, Ltd., Hanjin Container Lines, Ltd., Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner System, Ltd., Nippon Yusen Kaisha, Ltd., Sea-Land Service, Inc., Orient Overseas Container Line, Inc.
*Synopsis:* The proposed modification would extend for one year the period in which existing individual carrier service contracts are grandfathered.
*Agreement No.:* 202–011231–001
*Title:* United States Gulf/Venezuela Freight Association
*Parties:* American Transport Lines, Inc., Companhia Anonima Venezolana De Navegacion Maritima Aragua, S.A
*Synopsis:* The proposed modification would permit the parties to charter space to one another on vessels owned or operated by them.

By Order of the Federal Maritime Commission.

Dated: March 30, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89–7905 Filed 4–3–89; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 1989.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Peter W. Field,* Charles V. Welden, Jr., and W. Edgar Welden, all of Birmingham, Alabama; to acquire 61.73 percent of the voting shares of First Banc Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

2. *John F. Phelps,* Gulf Breeze, Florida; to acquire an additional 20.66 percent of the voting shares of Liberty Holding Company, Pensacola, Florida, for a total of 30.55 percent, and thereby indirectly acquire Liberty Bank, Pensacola, Florida.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oswego Community Bank Employee Stock Ownership Plan,* Oswego, Illinois; to acquire an additional 6.79 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, for a total of 16.31 percent and thereby indirectly acquire Oswego Community Bank, Oswego, Illinois.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *W. Scott Sayer,* Finley, North Dakota; to acquire 18.96 percent of the voting shares of Citizens Bank Holding Company, Finley, North Dakota, and thereby indirectly acquire Citizens State Bank of Finley, Finley, North Dakota.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Equicorp Texas, Inc.,* Dallas, Texas; to acquire 13.12 percent of the voting shares of Ameritex Bancshares Corporation, Haltom City, Texas, and thereby indirectly acquire Riverbend Bank, National Association, Fort Worth, Texas; American Bank, Grapevine, Texas; and American Bank of Haltom City, Haltom City, Texas.

Board of Governors of the Federal Reserve System, March 29, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89–7885 Filed 4–3–89; 8:45 am]

BILLING CODE 6210–01–M

### First National Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval

under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 21, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Financial Corporation,* Manchester, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Manchester, Manchester, Kentucky.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crown National Bancorporation, Inc.,* Charlotte, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Crown National Bank, in organization, Charlotte, North Carolina, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *BJS, Inc.,* West Union, Iowa; to acquire 55.4 percent of the voting shares of Westmont Corporation, West Union, Iowa.

2. *First Eagle Bancshares, Inc.,* Roselle, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Roselle, Roselle, Illinois.

3. *First Michigan Bank Corporation,* Holland, Michigan; to acquire 100 percent of the voting shares of Security National Bank of Manistee, Manistee, Michigan.

4. *Lake Shore Bancorp, Inc.,* Chicago, Illinois; to acquire 100 percent of the voting shares of Illinois Center Bancorporation, Inc., Glen Ellyn, Illinois, and thereby indirectly acquire Center Bank-Glen Ellyn, Glen Ellyn, Illinois.

5. *Readlyn Bancshares, Inc.,* St. Paul, Minnesota; to acquire 12 percent of the voting shares of Britt Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly acquire First State Bank, Britt, Iowa.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Heritage Bancshares Corporation,* Pennock, Minnesota; to merge with Monticello Bancshares, Inc., Monticello, Minnesota, and thereby indirectly acquire Wright County State Bank, Monticello, Minnesota.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Greater Southwest Bancshares, Inc. ESOP & T,* Irving, Texas; to become a bank holding company by acquiring 33.74 percent of the voting shares of Greater Southwest Bancshares, Inc., Irving, Texas, and thereby indirectly acquire Bank of the West, Irving, Texas.

Board of Governors of the Federal Reserve System, March 29, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-7886 Filed 4-3-89; 8:45 am]

BILLING CODE 6210-01-M

## Imperial Bank; Corporation to do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than April 27, 1989.

**A. Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, DC 20551:

1. *Imperial Bank,* Inglewood, California; to establish a corporation to be known as Imperial International Bank to be located in Inglewood, California. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, March 29, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-7887 Filed 4-3-89; 8:45 am]

BILLING CODE 6210-01-M

## Northwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets of Corporate Funding, Inc., Grand Rapids, Michigan, and thereby engage in leasing personal property or acting as agent, broker or advisor in leasing personal property pursuant to § 225.25(b)(5); and making, acquiring or servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 29, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-7888 Filed 4-3-89; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

[G-89-2]

### Delegation of Authority to the Secretary of State

Pursuant to the authority vested in me be section 3726 of Title 31, United States Code, I have determined that it is cost-effective or otherwise in the public interest to delegate authority to the Secretary of State to conduct a prepayment audit of transportation bills relating to the movement of unaccompanied air baggage between Washington, DC, and overseas locations, subject to the provisions of the Federal Property Management Regulations, Title 41, Code of Federal Regulations, Supbart 101-41, and amendments thereto. This prepayment audit will be conducted at the Office of Transportation, Department of State, Washington, DC.

The Secretary of State may redelegate this authority to any officer, official, or employee of the Department of State.

The Secretary of State shall notify GSA in writing of these redelegations and their basis. This delegation is effective upon publication in the **Federal Register**.

Dated: March 23, 1989.

**Richard G. Austin,**

*Acting Administrator of General Services.*

[FR Doc. 89-7986 Filed 4-3-89; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 89E-0055]

### Determination of Regulatory Review Period for Purposes of Patent Extension; Optiray™

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Optiray™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nancy Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Optiray™ (ioversol) which is indicated for angiography throughout the cardiovascular system. These include cerebral, coronary, peripheral, visceral and renal arteriography, aortography, and left ventriculography. Optiray™-320 is also indicated for contrast enhanced computed tomographic imaging of the head and body, and intravenous excretory urography. Optiray™-240 is indicated for cerebral angiography and venography. Optiray™-160 is indicated for intra-arterial digital subtraction angiography (IA-DSA). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Optiray™ (U.S. Patent No. 4,396,598) from Mallinckrodt, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated February 21, 1980, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, ioversol, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requsted that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Optiray™ is 1,075 days. Of this time, 521 days occurred during the testing phase of the regulatory review period, while 554 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 22, 1986. FDA has verified the applicant's claim that the investigational new drug (IND) application for Optiray™ became effective on January 22, 1986.

2. *The date the application was initially submitted with respect to the*

*human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 26, 1987. The applicant claims that the new drug application for Optiray™ (NDA 19–710) was initially submitted on June 25, 1987. However, FDA records indicate that the application was not received until June 26, 1987.

3. *The date the application was approved:* December 30, 1988. FDA has verified the applicant's claim that NDA 19–710 was approved on December 30, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 813 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 5, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 2, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1989.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 89–7893 Filed 4–3–89; 8:45 am]

BILLING CODE 4160–01–M

## Health Care Financing Administration

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

**AGENCY:** Health Care Financing Administration.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes it own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Claims Processing Assessment System; *Form Number:* HCFA–R–83; *Frequency:* Annually; *Respondents:* State Medicaid Agencies; *Estimated Number of Responses:* 1; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Physician/Supplier Overpayment Reporting System; *Form Number:* HCFA–496; *Frequency:* Upon identification of overpayment; *Respondents:* Business/other for profit and non-profit institutions; *Estimated Number of Responses:* 34,220; *Average Hours per Response:* .025; *Total Estimated Burden Hours:* 856.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Provider Overpayment Report; *Form Number:* HCFA–481; *Frequency:* Daily; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 32,500, *Average Hours per Response:* .1; *Total Estimated Burden Hours:* 3,250.

4. *Type of Request:* Revision; *Title of Information Collection:* Home Health Agency Plan of Treatment Forms; *Form Number:* HCFA–485–488; *Frequency:* Occasionally; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 3,218,927; *Average Hours per Response:* .75; *Total Estimated Burden Hours:* 2,414,195. This request includes an expanded use of item 13 of Form HCFA–486. The forms will collect information for determining the number of hours per week spent in the home by the nurse or home health aide. The HCFA has requested expedited review by the Office of Management and Budget. In keeping with the requirements for expedited reviews, we are attaching a copy of the form and instructions.

5. *Type of Request:* Extension; *Title of Information Collection:* Supplemental Survey Mechanism; *Form Number:* HCFA–R–7; *Frequency:* Annually; *Respondents:* Individuals/households and State/local governments; *Estimated Number of Responses:* 3,900; *Average Hours per Response:* 1.5; *Total Estimated Burden Hours:* 5,850.

6. *Type of Request:* Revision; *Title of Information Collection:* Fire Safety Survey Report Forms; *Form Number:* HCFA–2786 A–D, F–H, J–M, P–Q; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 20,637; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 20,637.

*Additional Information or Comments:* Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: March 28, 1989.

**Louis B. Hays,**

*Acting Administrator, Health Care Financing Administration.*

BILLING CODE 4120–03–M

Department of Health and Human Services
Health Care Financing Administration

OMB No 0938-0357

## MEDICAL UPDATE AND PATIENT INFORMATION

| 1. Patient's HI Claim No. | 2. SOC Date | 3. Certification Period From: To: | 4. Medical Record No. | 5. Provider No. |
|---|---|---|---|---|
| | | | | |

| 6. Patient's Name | 7. Provider's Name |
|---|---|
| | |

| 8. Medicare Covered: ☐ Y ☐ N | 9. Date Physician Last Saw Patient: | 10. Date Last Contacted Physician: |
|---|---|---|
| | | |

| 11. Is the Patient Receiving Care in an 1861 (J)(1) Skilled Nursing Facility or Equivalent? ☐ Y ☐ N ☐ Do Not Know | 12. ☐ Certification ☐ Recertification ☐ Modified |
|---|---|
| | |

13. Specific Services and Treatments

| Discipline | Visits (This Bill) Rel. to Prior Cert. | Frequency and Duration | Treatment Codes | Total Visits Projected This Cert. |
|---|---|---|---|---|
| | | | | |

| 14 Dates of Last Inpatient Stay: Admission Discharge | 15. Type of Facility: |
|---|---|
| | |

16. Updated Information: New Orders/Treatments/Clinical Facts/Summary from Each Discipline

17. Functional Limitations (Expand From 485 and Level of ADL) Reason Homebound/Prior Functional Status

18. Supplementary Plan of Treatment on File from Physician Other than Referring Physician: ☐ Y ☐ N
(If Yes, Please Specify Giving Goals/Rehab. Potential/Discharge Plan)

19 Unusual Home/Social Environment

| 20. Indicate Any Time When the Home Health Agency Made a Visit and Patient was Not Home and Reason Why if Ascertainable | 21. Specify Any Known Medical and/or Non-Medical Reasons the Patient Regularly Leaves Home and Frequency of Occurrence |
|---|---|
| | |

| 22. Nurse or Therapist Completing or Reviewing Form | Date (Mo., Day, Yr.) |
|---|---|
| | |

Form HCFA-486 (C3) (4-87)

# ADVANCE COPY OF FINAL ISSUANCE

# medicare
## Home Health Agency Manual

Department of Health and Human Services
Health Care Financing Administration

INTERIM MANUAL INSTRUCTION

Transmittal No. IM-88-3 Date NOVEMBER 1988

| REVISED MATERIAL | REVISED PAGES | REPLACED PAGES |
|---|---|---|
| Table of Contents Chapter II | 1 p. | 1 p. |
| Sec IM 206.6 | 2 pp. | —— |
| Sec IM 234.8 | 1 p. | —— |

FILE AT THE END OF CHAPTER II

CHANGED IMPLEMENTING INSTRUCTIONS — EFFECTIVE DATE: Retroactive To Claims Pending or Submitted on or After February 17, 1987

Section IM 206.6, Part-Time or Intermittent Home Health Aide and Skilled Nursing Care.--This section is revised to define "part time or intermittent" skilled nursing and home health aide services in response to the decision of the District Court of the District of Columbia in Duggan v. Bowen. This policy applies only where the beneficiary qualifies for coverage as specified in §203, since the definition of "intermittent" used to determine eligibility remains the same. (A new definition of "intermittent" as 6 days or fewer both for qualifying and for coverage will become effective on 1/1/90.) Beneficiaries who did not qualify for coverage before the court's decision because they did not meet one or more of the eligibility requirements continue not to qualify for coverage of any home health services.

NEW IMPLEMENTING INSTRUCTIONS — EFFECTIVE DATE: For HCFA-485/486s submitted on and after March 1, 1989.

Section IM 234.8, HCFA-486 - Medical Update and Patient Information.—This section is revised to include the requirement that the number of hours spent in the home (excluding travel time) by the nurse and home health aide be identified. This information is needed to determine if skilled nursing and aide services are part-time or intermittent as defined in §206.6.

NOTE: THIS MATERIAL WILL BE INTERGRATED INTO THE MANUAL TEXT AT A LATER DATE.



BILLING CODE 4120-03-C

CHAPTER II.—Coverage of Services

(Table of Contents for Interim Manual Instructions)



**Coverage of Services**

*IM 206.6 Part-time or Intermittent Home Health Aide and Skilled Nursing Services*

Where a beneficiary qualifies for coverage of home health services, Medicare covers either part time or intermittent home health aide services and skilled nursing services.

A. *Definition of "Part-time".*—"Part-time" means any number of days per week:

- Up to and including 28 hours per week of skilled nursing and home health aide servies combined for less than 8 hours per day; or
- Up to 35 hours per week of skilled nursing and home health aide services combined for less than 8 hours per day subject to review by fiscal intermediaries on a case by case basis, based upon documentation justifying the need for and reasonableness of such additional care.

B. *Definition of "Intermittent".*—"Intermittent" means:

- Up to and including 28 hours per week of skilled nursing and home health aide services combined provided on a less than daily basis;
- Up to 35 hours per week of skilled nursing and home health aide services combined which are provided on a less than daily basis, subject to review by fiscal intermediaries on a case by case basis, based upon documentation justifying the need for and reasonableness of such additional care; or
- Up to and including full-time (i.e., 8 hours per day) skilled nursing and home health aide services combined which are provided and needed 7 days per week for temporary, but no indefinite, periods of time of up to 21 days with allowances for extensions in exceptional circumstances where the need for care in excess of 21 days is finite and predictable.

C. *Impact on Care Provided in Excess of "Intermittent" or "Part-time" care.*—Home health aide and/or skilled nursing care in excess of the amounts of care which meet these definitions of part time or intermittent may be provided to a home care beneficiary or purchased by other payers without bearing on whether the home health aide and skilled nursing care meets the Medicare definitions of part time or intermittent.

Example: A beneficiary needs skilled nursing monthly for a catheter change and the home health agency also renders needed daily home health aide services 24 hours per day which will be needed for a long and indefinite period of time. The HHA bills Medicare for the skilled nursing and home health aide services which were provided before the 35th hour of service each week and bills the beneficiary (or another payer) for the remainder of the care. If the intermediary determines that 35 hours of care are reasonable and necessary, Medicare would therefore cover the 35 hours of skilled nursing and home health aide visits.

D. *Application of This Policy Revision.*—A beneficiary must meet the longstanding and unchanged qualifying criteria for Medicare coverage of home health services, before this policy revision becomes applicable to skilled nursing services and/or home health aide services. The definition of "intermittent" with respect to the need for skilled nursing care where the beneficiary qualifies for coverage based on the need for "skilled nursing care on an intermittent basis" remains unchanged. Specifically:

- This policy revision always applies to home health aide services when the beneficiary qualifies for coverage;
- This policy revision applies to skilled nursing care only when the beneficiary needs physical therapy or speech therapy or continued occupational therapy, and also needs skilled nursing care; and
- If the beneficiary needs skilled nursing care but does not need physical therapy or speech therapy or occupational therapy, the beneficiary must still meet the longstanding and unchanged definition of "intermittent" skilled nursing care in order to qualify for coverage of any home health services.

*IM 234.8, HCFA-486—Medical Update of Patient Information*

13. *Specific Services and Treatments.*—When skilled nursing and/or home health aide visits are billed, enter the following information in the applicable columns:

| Discipline column | Frequency and duration column |
|---|---|
| SN | Average hours (excluding travel time) per week expected to be spent in the home over the period covered by the HCFA-486. Round minutes to the nearest hours. |
| AIDE | Average hours (excluding travel time) per week expected to be spent in the home over the period covered by the HCFA-486. Round minutes to the nearest hour. |

If you currently fully complete Item 13 for intermediary screening, show the hours in parenthesis before the first frequency and duration.

If the hours spent in the home in the interim billing period exceed projected hours and the hours are greater than 28 hours per week, submit an updated HCFA-486 for the number of hours spent in the home and medical reasons why additional hours were necessary.

EMC billers will enter hours when applicable in Record Type 72, Field No. 10. Enter the average weekly skilled nursing hours in positions 178 and 179 when skilled nursing visits are billed. Enter the average weekly aide hours in positions 180 and 181 when aide visits are billed.

The hours must be reflected on HCFA-486s submitted to intermediaries on and after March 1, 1989. Records of exact hours and hourly increments spent in the home by the nurse and home health aide must be available for postpayment audit of beneficiary records.

This information is used to determine if the skilled nursing and aide services are "part-time or intermittent" as defined in § 206.6.

If all skilled nursing and home health visits rendered are determined to be covered under Medicare and the "part-time or intermitttent" requirements are met (or an exception is justifiable) all such visits are payable. A medical review decision will not be made that covered services could have been accomplished in fewer hours.

BILLING CODE 4120-03-M

ADVANCE COPY
OF FINAL ISSUANCE

# medicare
## Intermediary Manual
## Part 3 – Claims Process

Department of Health and Human Services
Health Care Financing Administration

INTERIM MANUAL INSTRUCTION

Transmittal No. IM-88-10 Date NOVEMBER 1988

| REVISED MATERIAL | REVISED PAGES | REPLACED PAGES |
|---|---|---|
| Table of Contents Chapter II | 1 p. | 1 p. |
| Sec IM 3119.6 | 2 pp. | —— |
| Table of Contents Chapter IX | 1 p. | —— |
| Sec IM 3902 | 2 pp. | —— |

FILE AT THE END OF CHAPTER II AND IX

CHANGED IMPLEMENTING INSTRUCTIONS — EFFECTIVE DATE: Retroactive To Claims Pending or Submitted on or After February 17, 1987

Section IM 3119.6, Part-Time or Intermittent Home Health Aide and Skilled Nursing Care.—This section is revised to define "part time or intermittent" skilled nursing and home health aide services in response to the decision of the District Court of the District of Columbia in Duggan v. Bowen. This policy applies only where the beneficiary qualifies for coverage as specified in §3116, since the definition of "intermittent" used to determine eligibility remains the same. (A new definition of "intermittent" as 6 days or fewer both for qualifying and for coverage will become effective on 1/1/90.) Beneficiaries who did not qualify for coverage before the court's decision because they did not meet one or more of the requirements continue not to qualify for coverage of any home health services.

Instructions for the application of this policy to claims submitted on or after February 17, 1987 and before the effective date for reporting of hours of service on the HCFA 486 are contained in Program Memorandum A-88-30.

NEW IMPLEMENTING INSTRUCTIONS — EFFECTIVE DATE: For HCFA-485/486s submitted on and after March 1, 1989.

Section IM 3902, Medical Review of Home Health Services.—This section is revised to require review of home health aide and skilled nursing hours (excluding travel time) spent in the home during visits. This information is needed to determine if skilled nursing and aide services are part-time or intermittent as defined in §3119.6.

NOTE: THIS MATERIAL WILL BE INTERGRATED INTO THE MANUAL TEXT AT A LATER DATE.



BILLING CODE 4120-03-C

**Chapter II.—Coverage of Services**

*Table of Contents for Interim Manual Instructions*



*IM 3119.6 Part-time or Intermittent Home Health Aide and Skilled Nursing Services.*

Where a beneficiary qualifies for coverage of home health services, Medicare covers both part-time or intermittent home health aide services and skilled nursing services.

A. *Definition of "Part-time".*—"Part-time" means any number of days per week:

- Up to and including 28 hours per week of skilled nursing and home health aide services combined for less than 8 hours per day; or
- Up to 35 hours per week of skilled nursing and home health aide services combined for less than 8 hours per day subject to review by fiscal intermediaries on a case by case basis, based upon documentation justifying the need for and reasonableness of such additional care.

B. *Definition of "Intermittent".*—"Intermittent" means:

- Up to and including 28 hours per week of skilled nursing and home health aide services combined provided on a less than daily basis;
- Up to 35 hours per week of skilled nursing and home health aide services combined which are provided on a less than daily basis, subject to review by fiscal intermediaries on a case by case basis, based upon documentation justifying the need for and reasonableness of such additional care; or
- Up to and including full-time (i.e., 8 hours per day) skilled nursing and home health aide services combined which are provided and needed 7 days per week for temporary, but not indefinite, periods of time of up to 21 days with allowances for extensions in exceptional circumstances where the need for care in excess of 21 days is finite and predictable.

C. *Impact on Care Provided in Excess of "Intermittent" or "Part-time" care.*—Home health aide and/or skilled nursing care in excess of the amounts of care which meet these definitions of part time or intermittent may be provided to a home care beneficiary or purchased by other payers without bearing on whether the home health aide and skilled nursing care meets the Medicare definitions of part time or intermittent.

Example: A beneficiary needs skilled nursing care monthly for a catheter change and the home health agency also renders needed daily home health aide services 24 hours per day which will be needed for a long and indefinite period of time. The HHA bills Medicare for the skilled nursing and home health aide services which were provided before the 35th hour of service each week and bills the beneficiary (or another payer) for the remainder of the care. If the intermediary determines that the 35 hours of care are reasonable and necessary, Medicare would therefore cover the skilled nursing and home health aide visits.

D. *Application of This Policy Revision.*—A beneficiary must meet the longstanding and unchanged qualifying criteria for Medicare coverage of home health services, before this policy revision becomes applicable to skilled nursing services and/or home health aide services. The definition of "intermittent" with respect to the need for skilled nursing care where the beneficiary qualifies for coverage based on the need for "skilled nursing care on an intermittent basis" remains unchanged. Specifically:

- This policy revision always applied to home health aid services when the beneficiary qualifies for coverage;
- This policy revision applies to skilled nursing care only when the beneficiary needs physical therapy or speech therapy or continued occupational therapy, and also needs skilled nursing care; and
- If the beneficiary needs skilled nursing care but does not need physical therapy or speech therapy or occupational therapy, the beneficiary must still meet the longstanding and unchanged definition of "intermittent" skilled nursing care in order to qualify for coverage of any home health services.

In cases in which the beneficiary did not need physical therapy or speech therapy or continued occupational therapy, and where the skilled nursing care he or she needed was not "intermittent", no payment may be made for any home health services because the beneficiary failed to meet the qualifying criteria.

**Chapter IX.—Medical Review**

*Table of Contents for Interim Manual Instructions*



*IM 3902, Medical Review of Home Health Services*

In addition to current MR requirements, review the number of hours spent in the home (excluding travel time) during skilled nursing and/or aide visits whenever:

- Home health aide visits are billed; and
- Skilled nursing visits are billed and the patient also needs physical or speech therapy or continued occupational therapy.

For services to be payable they must meet the part-time or intermittent criteria as defined in the § 3119.6 Skilled nursing hours (when skilled nursing visits are present) are combined with aide hours (when aide visits are present) to determine total hours per week.

13. *Specific Services and Treatments.*—When skilled nursing and/or home health aide visits are billed, the following information should be entered in the applicable columns:

| Discipline column | Frequency and duration column |
|---|---|
| SN | Average hours (excluding travel time) per week expected to be spent in the home over the period covered by the HCFA-486. Minutes are rounded to the nearest hour. |
| AIDE | Average hours (excluding travel time) per week expected to be spent in the home over the period covered by the HCFA-486. Minutes are rounded to the nearest hour. |

If Item 13 is currently completed for your screening, the hours are shown in parenthesis before the first frequency and duration.

If the hours spent in the home in the interim billing period exceed projected hours and the hours are greater than 28 hours per week, the HHA submits an updated HCFA-486 for the number of hours spent in the home and medical reasons why additional hours were necessary.

EMC billers will enter hours when applicable in Record Type 72, Field No. 10. The average weekly skilled nursing hours are entered in positions 178 and 179 when skilled nursing visits are

billed. The average weekly aide hours are entered in positions 180 and 181 when aide visits are billed.

The information must be reflected on HCFA–486s submitted to you on and after March 1, 1989. Records of exact hours and hourly increments spent in the home by the nurse and home health aide must be available for postpayment audit of beneficiary records. If the hours are not present on the HCFA–486, you may on individual cases make a judgment based on the medical documentation whether you need to request the hours. If an HHA consistently neglects to show hours, use the HCFA–488 to request hours before making a coverage decision.

If the hours exceed 28 hours per week and there is a question of meeting the part-time or intermittent criteria determine the exact hours spent in the home since the HCFA–486 may reflect only a projection of hours.

If all skilled nursing and home health aide visits rendered are determined to be covered under Medicare and the part-time or intermittent requirements are met (or an exception is justifiable) pay all such visits. Do not make a decision that covered services could have been accomplished in fewer hours.

[FR Doc. 89–7830 Filed 4–3–89; 8:45 am]
BILLING CODE 4120–03–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N–89–1963]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 29, 1989.

**John T. Murphy,**

*Director, Information Policy and Mangement Division.*

*Proposal:* Preauthorized Debits.

*Office:* Administration.

*Description of The Need For The Information and Its Proposed Use:* This form will be used to obtain data for the electronic transfer of funds from program participant's, who elect to pay by this method, checking or savings account to make specific monthly payments due HUD.

*Form Number:* HUD–92090.

*Respondents:* Individuals or Households.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–92090 | 5,000 | | 1 | | .25 | | 1,250 |

*Status:* New.

*Contact:* Betty Gray, HUD, (202) 755–0941; John Allison, OMB, (202) 395–6880.

Date: March 29, 1989.

*Proposal:* Title I Financial Statement.

*Office:* Housing.

*Description of the need for the Information and Its Proposed Use:* This form is used by HUD in determining factors involved when compromises are reached with borrowers to lighten the financial burdens in given cases of Title I Home Improvement and Mobile Home Loans.

*Form Number:* HUD–56142.

*Respondents:* Individuals or Households.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–56142 | 1,258 | | 1 | | 1 | | 1,258 |

*Total Estimated Burden Hours:* 1,258.

*Status:* Extension.

*Contact:* Carol A. White, HUD, (202) 755–6857; John Allison, OMB, (202) 395–6880.

Date: March 29, 1989.

[FR Doc. 89–7977 Filed 4–3–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1967]

## Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 28, 1989.

John T. Murphy,

*Director, Information Policy and Mangement Division.*

*Proposal:* Specifications of Repairs and Draw Report.

*Office:* Housing.

*Description of The Need For The Information and Its Proposed Use:* Under section 203(k), these forms will be used by homebuyers and contractors to provide a work description and cost estimate of the proposed rehabilitation. They also will be used to request construction draws for rehabilitation work already completed. The forms are submitted to HUD by mortgagees and are used as a certification for those parties involved in the program.

*Form Number:* HUD–9746 and HUD–9746A.

*Respondents:* Businesses and Other For-Profit.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Specifications of Repair | 2,500 | | 1 | | 2.0 | | 5,000 |
| Draw Request | 2,500 | | 5 | | 1.5 | | 18,750 |

*Total Estimated Burden Hours:* 23,750.

*Status:* Extension.

*Contact:* Kenneth L. Crandall, HUD, (202) 755–6720; John Allison, OMB, (202) 395–6880.

Date: March 15, 1989.

*Proposal:* Manufactured Home Construction and Safety Standards Act Reporting Requirements.

*Office:* Housing.

*Description of the Need for the Information and Its Proposed Use:* The standards require that pertinent information in the form of labels and notices be placed in each manufactured home. The regulations require that manufacturers and other program participants provide the Department with data concerning the program.

*Form Number:* None.

*Respondents:* Individuals or Households, State or Local Governments, and Business or Other For-Profit.

*Frequency of Submission:* Recordkeeping.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| SAA Reports | 34 | | 12 | | 1 | | 408 |
| IPIA Reports | 16 | | 12 | | 1 | | 192 |
| Manufacturer Recordkeeping | 240,000 | | 1 | | .16 | | 38,400 |
| Consumer Information Cards | 240,000 | | 1 | | .48 | | 115,200 |
| State Plans | 160 | | 1 | | 2 | | 320 |
| Consumer Manuals | 240,000 | | 1 | | .08 | | 19,200 |
| Labels and Notices | 240,000 | | 1 | | .30 | | 72,000 |

*Total Estimated Burden Hours:* 245,720.

*Status:* Revision.

*Contact:* Donald R. Fairman, HUD, (202) 755–6590; John Allison, OMB, (202) 395–6880.

Date: March 16, 1989.

*Proposal:* Survey of Formaldehyde Levels in Manufactured Homes.

*Office:* Housing.

*Description of the Need for the Information and Its Proposed Use:* The survey will be used to monitor emission levels in manufactured homes constructed since February 11, 1985, HUD's effective date for formaldehyde control requirements, for plywood and particleboard panels.

*Form Number:* None.

*Respondents:* Individuals or Households.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Survey | 300 | | 1 | | 1 | | 300 |
| Survey | 100 | | 2 | | 1 | | 200 |
| On-Site Field Monitoring | 40 | | 1 | | 2 | | 80 |

*Total Estimated Burden Hours:* 580.

*Status:* New.

*Contact:* Richard Mendlen, HUD, (202) 755–6920; John Allison, OMB, (202) 395–6880.

Date: March 21, 1989.

*Proposal:* Requisition for Development or Modernization Funds.

*Office:* Public and Indian Housing.

*Description of the Need for the Information and Its Proposed Use:* The Housing Act of 1937, as amended, authorizes HUD to assist Public Housing Authorities (PHAs) and Indian Housing Authorities (IPHs) in the development and rehabilitation of lower income housing. PHAs and IHAs will submit an approved Requisition for Development and Modernization Funds (Form HUD–5402A) to obtain financial assistance.

*Form Number:* HUD–5402A.

*Respondents:* State or Local Governments.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | House per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–5402A | 2,300 | | 25 | | .5 | | 28,750 |
| Worksheet | 500 | | 1 | | 6 | | 3,000 |

*Total Estimated Burden Hours:* 31,750.

*Status:* Extension.

*Contact:* Stephanie Avery-Boyd, HD, (202) 755–7920; John Allison, OMB, (202) 395–6880.

Date: March 21, 1989.

*Proposal:* Legal Instructions Concerning Applications for Full Insurance Benefits Assignment of Multifamily Mortgages to the Secretary.

*Office:* General Counsel.

*Description of the Need for the Information and Its Proposed Use:* Holders of HUD-insured multifamily mortgages may receive mortgage insurance benefits, in the event of a default, by assigning the mortgage to HUD. This form describes the legal documents to be submitted by the mortgagee and the procedures for submission.

*Form Number:* HUD–1457.

*Respondents:* States or Local Governments, Businesses or Other For-Profit Federal Agencies or Employees.

*Frequency of Submission:* Other.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | House per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–1457 | 100 | | 1 | | 26 | | 2,600 |

*Total Estimated Burden Hours:* 2,600.

*Status:* Existing.

*Contact:* Harold A. Levy, HUD, (202) 755–6975; John Allison, OMB, (202) 395–6880.

Date: March 23, 1989.

[FR Doc. 89–7978 Filed 4–3–89; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–050–09–4370–16]**

### Willow Spring Development Environmental Assessment; Comment Period

**AGENCY:** Bureau of Land Management, Richfield.

**ACTION:** Notice of comment period.

**SUMMARY:** The Willow Spring Development Environmental Assessment (EA) is available for comment for 30 days from publication in the **Federal Register**. Willow Spring is located in the Conger Mountain Wilderness Study Area. For further information contact Roy Edmonds at (801) 896–8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Date: March 28, 1989.

**Jerry W. Goodman,**

*District Manager.*

[FR Doc. 89–7891 Filed 4–3–89; 8:45 am]

BILLING CODE 4310–DQ–M

[CO-070-09-4212-13; C-49027]

## Realty Action; Exchange

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Designation of public lands in Pitkin County, Colorado, as preliminarily suitable for disposal out of Federal ownership by exchange.

**SUMMARY:** Pursuant to sections 205, 206, 209, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified lands within the following-described parcels of public land as preliminarily suitable for exchange. This action is in response to a land exchange proposal submitted by the Western Land Exchange Company.

**Sixth Principal Meridian, Colorado**

Surface and Subsurface Estate
T. 10 S., R. 86 W.,
Sec. 3: Lots 15 and 17, SE¼SE¼NW¼

Subsurface Estate
T. 10 S., R. 86 W.,
Tract 51

The lands described above contain 251.31 acres, more or less. The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws and the mineral leasing laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and the land use decision, a Notice of Realty Action shall be published to specify the selected public lands and the offered private lands proposed for exchange.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this proposed exchange is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

**Bruce Conrad,**

*District Manager, Grand Junction District.*

[FR Doc. 89-7988 Filed 4-3-89; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-09-4214-10; CACA 16422]

## California; Proposed Withdrawal and Opportunity for Public Meeting; Correction

March 27, 1989.

In notice document 88-21991 beginning on page 37650 in the issue of September 27, 1988, make the following correction:

On page 37650 in the third column, line 5 from the top, which reads "lands from location and entry under the United States mining laws," is hereby corrected to read "lands from all forms of appropriation under the public land laws, including the United States mining laws (30 U.S.C., Ch. 2),".

**Nancy J. Alex,**

*Chief, Lands Section Branch of Adjudication and Records.*

[FR Doc. 89-7989 Filed 4-3-89; 8:45 am]

BILLING CODE 4310-40-M

## Minerals Management Service

## Development Operations Coordination Document; Chevron U.S.A. Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5283, Block 168, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 24, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 27, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89-7990 Filed 4-3-89; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Conoco Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Conoco Inc., Unit Operator of the Green Canyon Block 184 Federal Unit Agreement No. 14–08–0001–2057, has submitted a DOCD describing the activities its proposes to conduct on the Green Canyon Block 184 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 24, 1989. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FUTHER INFORMATION CONTACT:** Mr. Al Durr: Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2659.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: March 27, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–7992 Filed 4–3–89; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; Texaco Producing Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Texaco Producing Inc. has submitted a DOCD describing the activities it proposed to conduct on Leases OCS–G 5778, 5784, and 6890, Blocks 825, 869, and 870, respectively, Viosca Knoll Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Morgan City and Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 24, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management services, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

**SUPPLEMENTARY INFORMATION:** The Purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: March 27, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCO Region.*

[FR Doc. 89–7991 Filed 4–3–89; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 25, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 19, 1989.

**Beth L. Savage,**

*Acting Chief of Registration, National Register.*

*ALABAMA*

*Hale County*

*Millwood*, Roughly bounded by Millwood Pond, Co. Rd. 17, and Black Warrior River, Greensboro vicinity, 89000314

*Jefferson County*

*Downtown Birmingham Retail and Theatre Historic District*, Roughly bounded by 3rd Ave. North, 20th St.

North, Morris Ave., and 17th St. North, Birmingham, 89000315

*ARIZONA*

*Navajo County*

*Winslow Commercial Historic District*, Roughly bounded by 3rd, Williamson Ave., 1st, and Warren Ave., Winslow, 89000316

*CALIFORNIA*

*San Francisco County*

*Southern Pacific Company Hospital Historic District*, 1400 Fall St., San Francisco, 89000319

*San Joaquin County*

*Woodbridge Masonic Lodge No. 131*, 1040 Augusta St., Woodbridge, 89000318

*FLORIDA*

*Alachua County*

*Evinston Community Store and Post Office*, Co. Rd. 225 N of jct. with Co. Rd. SE. 10, Evinston, 89000321

*Pleasant Street Historic District*, Roughly bounded by NW. 8th Ave., NW. 1st St., NW. 2nd Ave., and NW. 6th St., Gainesville, 89000323

*University of Florida Campus Historic District*, Bounded by W. University Ave., US 441/SW. 13th St., Stadium Rd., and North-South Dr., Gainesville, 89000322

*Lee County*

*Punta Gorda Fish Company Ice House*, N shore of entrance to Safety Harbor, North Captiva Island, 89000320

*IDAHO*

*Madison County*

*Spori, Jacob, Building*, 100 E. 2nd South, Rexburg, 89000329

*IOWA*

*Van Buren County*

*Bonaparte Historic Riverfront District*, Roughly bounded by Second St., Washington, St., Des Moines River, and Richard St., Bonaparte, 89000313

*LOUISIANA*

*Grant Parish*

*Roberts, Earl, House*, 253 Second St., Colfax, 89000328

*Terrebonne Parish*

*Smith, Clifford Percival, House*, 501 E. Park Ave., Houma, 89000327

*West Baton Rouge Parish*

*Port Allen High School*, 610 Rosedale St., Port Allen, 89000326

*MISSOURI*

*Jackson County*

*Bryant Building*, 1102 Grand Ave., Kansas City, 89000312

*NORTH CAROLINA*

*Chatham County*

*North Carolina School for the Deaf Historic District (Morganton MRA)*, Jct. US 70 and US 64, Morganton, 89000325

*PUERTO RICO*

*Bayamon Municipality*

*Farmacia Serra*, Degetau No. 11, Bayamon, 89000317

*San Juan Municipality*

*Escuela Brambaugh (Early Twentieth Century Schools in Puerto Rico TR)*, San Juan Bautista St. and Ponce de Leon Ave., San Juan, 89000324

[FR Doc. 89-7959 Filed 4-3-89; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting of April 13–14, 1989 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street, NW., Washington, DC. The research review system used in A.I.D. will be discussed. In addition, the final report from an earlier discussion on research priorities for A.I.D. will be presented for the approval of the Committee.

The meeting will begin at 9:00 a.m. on April 13 and 8:00 a.m. on April 14. It will adjourn at 5:00 p.m. on April 13 and 12:00 noon on April 14. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Sciences and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875-4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

**Curtis R. Jackson,**

*A.I.D. Representative, Research Advisory Committee.*

Date: March 23, 1989.

[FR Doc. 7987 Filed 4-3-89; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act and Targeted Jobs Tax Credit Program; Lower Living Standard Income Level

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of determination of lower living standard income level; request for comments.

**SUMMARY:** The Job Training Partnership Act (JTPA) provides that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL. The Internal Revenue Code of 1954 also provides that the term "economically disadvantaged" may be defined as 70 percent of the LLSIL for purposes of the Targeted Job Tax Credit (TJTC) program.

**DATES:** *Effective date:* This notice is effective on May 4, 1989. *Comments:* Written comments on this notice are invited. Comments will be accepted through May 4, 1989.

**ADDRESS:** Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, Room N-4703, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert N. Colombo, Telephone: 202-535-0577 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those economically disadvantaged individuals * * * who are in special need of such training to obtain productive employment." JTPA section 2 (emphasis added); see 20 CFR 626.1(a)(2). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA section 4(16) defines LLSIL as follows:

The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family

size) determined annually by the Secretary (of Labor) based on the most recent "lower living family budget" issued by the Secretary.

Internal Revenue Code (I.R.C.) sections 44B and 51 established the Targeted Jobs Tax Credit (TJTC) program for a portion of the wages paid by employers to employees from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family". See, e.g., 26 U.S.C. 51(d)(3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). The LLSIL figures published in this notice shall be used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC program. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operator. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published the 1988 updates to the LLSIL in the **Federal Register** of May 16, 1988. 53 FR 17258. ETA has again updated the LLSIL to reflect cost of living increases for 1988 by applying the percentage change in the December 1988 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1987 CPI–U, to each of the May 16, 1988, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to Section 4(8) of JTPA, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

**Northeast**

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

**North Central**

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

**South**

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Mississippi
Micronesia
North Carolina
Tennessee
Texas
Virginia
West Virgina

**West**

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the 1988 figures were updated by creating a "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI–U changes for a 12-month period ending in December 1988. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest ten, are set forth in Table 3 below.

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1989 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses.

Section 4(8) of JTPA defines "economically disadvantaged' as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 54 FR 7097 (February 16, 1989).

**Use of These Data**

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESAs), and employers in their States to use in determining eligibility for JTPA, and TJTC programs. The Governor should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Table 4 may be used with any of the levels designated.

Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulations at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

**Disclaimer on Statistical Uses**

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and TJTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not

precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI–U.

Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and TJTC programs.

Signed at Washington, DC, this 29th day of March 1989.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

| Region | 1989 Adjusted LLSIL | 70 Percent LLSIL |
|---|---|---|
| Northeast: | | |
| Metro | 20,820 | 14,570 |
| Non-Metro | 20,470 | 14,330 |
| North Central: | | |
| Metro | 19,670 | 13,770 |
| Non-Metro | 18,500 | 12,950 |
| South: | | |
| Metro | 18,680 | 13,080 |
| Non-Metro | 17,380 | 12,170 |
| West: | | |
| Metro | 20,600 | 14,420 |
| Non-Metro | 20,360 | 14,250 |

[1] For ease of calculation, these figures have been rounded to the nearest ten dollars.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

| Region | 1989 Adjusted LLSIL | 70 Percent LLSIL |
|---|---|---|
| Alaska: | | |
| Metro | 26,510 | 18,560 |
| Non-Metro | 26,200 | 18,340 |
| Hawaii-Guam: | | |
| Metro | 26,890 | 18,820 |
| Non-Metro | 26,580 | 18,610 |

[1] Rounded to the nearest ten dollars.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSA'S [1]

| Region MSA | 1989 Adjusted LLSIL | 70 Percent LLSIL |
|---|---|---|
| Anchorage, AK | 26,510 | 18,560 |
| Atlanta, GA | 18,950 | 13,270 |
| Baltimore, MD | 19,980 | 13,990 |
| Boston, MA | 22,260 | 15,580 |
| Buffalo, NY | 18,950 | 13,270 |
| Chicago, IL/Northwestern IN | 20,410 | 14,290 |
| Cincinnati, OH/KY/IN | 20,150 | 14,110 |
| Cleveland, OH | 20,290 | 14,200 |
| Dallas-Ft. Worth, TX | 18,100 | 12,670 |
| Denver-Boulder, CO | 19,580 | 13,710 |
| Detroit, MI | 18,920 | 13,240 |
| Honolulu, HI | 26,890 | 18,820 |
| Houston, TX | 17,500 | 12,250 |
| Kansas City, MO/KS | 19,290 | 13,500 |
| Los Angeles-Long Beach-Anaheim, CA | 21,660 | 15,160 |
| Milwaukee, WI | 19,540 | 13,680 |
| Minneapolis-St. Paul, MN | 19,410 | 13,590 |
| New York, NY/Northeastern NJ | 21,480 | 15,040 |
| Philadelphia, PA/NJ | 20,510 | 14,360 |
| Pittsburgh, PA | 19,390 | 13,570 |
| San Diego, CA | 21,750 | 15,230 |
| San Francisco-Oakland, CA | 21,690 | 15,180 |
| Seattle-Everett, WA | 20,870 | 14,610 |
| St. Louis, MO/IL | 19,290 | 13,500 |
| Washington, DC/MD/VA | 22,410 | 15,690 |

[1] Rounded to the nearest ten dollars.

TABLE 4.—SEVENTY PERCENT OF UPDATED 1989 LLSIL, BY FAMILY SIZE [1]

| Family of One | Two | Three | Four | Five | Six |
|---|---|---|---|---|---|
| (4,380) | (7,180) | (9,860) | 12,170 | 14,360 | 16,790 |
| (4,410) | (7,230) | (9,920) | 12,250 | 14,460 | 16,910 |
| (4,560) | (7,480) | 10,260 | 12,670 | 14,950 | 17,480 |
| (4,660) | (7,640) | 10,490 | 12,950 | 15,280 | 17,870 |
| (4,710) | (7,720) | 10,590 | 13,080 | 15,430 | 18,050 |
| (4,770) | (7,810) | 10,720 | 13,240 | 15,620 | 18,270 |
| (4,780) | (7,830) | 10,750 | 13,270 | 15,660 | 18,310 |
| (4,860) | (7,970) | 10,940 | 13,500 | 15,930 | 18,630 |
| (4,890) | (8,010) | 10,990 | 13,570 | 16,010 | 18,730 |
| (4,890) | 8,020 | 11,010 | 13,590 | 16,040 | 18,750 |
| (4,920) | 8,070 | 11,080 | 13,680 | 16,140 | 18,880 |
| (4,940) | 8,090 | 11,110 | 13,710 | 16,180 | 18,920 |
| (4,960) | 8,120 | 11,150 | 13,770 | 16,250 | 19,000 |
| (5,040) | 8,250 | 11,330 | 13,990 | 16,510 | 19,310 |
| (5,080) | 8,320 | 11,430 | 14,110 | 16,650 | 19,470 |
| (5,110) | 8,380 | 11,500 | 14,200 | 16,760 | 19,600 |
| (5,130) | 8,410 | 11,540 | 14,250 | 16,820 | 19,670 |
| (5,140) | 8,430 | 11,570 | 14,290 | 16,860 | 19,720 |
| (5,160) | 8,450 | 11,610 | 14,330 | 16,910 | 19,780 |
| (5,170) | 8,470 | 11,630 | 14,360 | 16,940 | 19,820 |
| (5,190) | 8,510 | 11,680 | 14,420 | 17,020 | 19,900 |
| (5,250) | 8,600 | 11,800 | 14,570 | 17,190 | 20,110 |
| (5,260) | 8,620 | 11,830 | 14,610 | 17,240 | 20,160 |
| (5,410) | 8,870 | 12,180 | 15,040 | 17,750 | 20,760 |
| (5,460) | 8,940 | 12,280 | 15,160 | 17,890 | 20,920 |
| (5,460) | 8,960 | 12,300 | 15,180 | 17,910 | 20,950 |
| (5,480) | 8,990 | 12,340 | 15,230 | 17,970 | 21,020 |
| (5,610) | 9,190 | 12,620 | 15,580 | 18,380 | 21,500 |
| (5,650) | 9,260 | 12,710 | 15,690 | 18,510 | 21,650 |
| 6,600 | 10,820 | 14,860 | 18,340 | 21,640 | 25,310 |
| 6,680 | 10,950 | 15,030 | 18,560 | 21,900 | 25,610 |
| 6,700 | 10,980 | 15,070 | 18,610 | 21,960 | 25,680 |
| 6,780 | 11,100 | 15,240 | 18,820 | 22,210 | 25,970 |

[1] Figures provided in Tables 1–3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the Family of Four column. Then one may read across the row for family sizes other than four in the appropriate columns.

## Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-service members (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1989.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after April 2, 1989.

| Pay grade | Monthly rate |
|---|---|
| (1) *Commissioned officers* | |
| O-10 | $7,530 |
| O-9 | 7,530 |
| O-8 | 7,527 |
| O-7 | 6,761 |
| O-6 | 5,736 |
| O-5 | 4,817 |
| O-4 | 3,970 |
| O-3 | 3,200 |
| O-2 | 2,526 |
| O-1 | 1,891 |
| (2) *Commissioned officers with over 4 years active duty as an enlisted member or warrant officer* | |
| O-3E | 3,654 |
| O-2E | 3,034 |
| O-1E | 2,473 |
| (3) *Warrant officers* | |
| W-4 | 3,538 |
| W-3 | 2,984 |
| W-2 | 2,620 |
| W-1 | 2,187 |
| (4) *Enlisted personnel* | |
| E-9 | 3,319 |
| E-8 | 2,809 |
| E-7 | 2,432 |
| E-6 | 2,084 |
| E-5 | 1,767 |
| E-4 | 1,492 |
| E-3 | 1,319 |
| E-2 | 1,207 |
| E-1 | 1,045 |

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on March 21, 1989.

Roberts T. Jones,
*Assistant Secretary of Labor.*

[FR Doc. 89-7961 Filed 4-3-89; 8:45 am]
BILLING CODE 4510-30-M

## Mine Safety and Health Administration

**[Docket No. M-89-2-M]**

## Georgia Kaolin Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Georgia Kaolin Company, Inc., Route 1, Box 468D, Dry Branch, Georgia 31020 has filed a petition to modify the application of 30 CFR 56.15003 (protective footwear) to its Dry Branch Plant (I.D. No. 09-00482) located in Twiggs County, Georgia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all persons wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.

2. As an alternate method, petitioner proposes that personnel palletizing bagged product in the bagging and loading department not be required to wear safety toed footwear. In support of this request, petitioner states that—

(a) The only items employees handle in this area are wooden pallets and bagged clay;

(b) The height of the pallet stacks does not exceed 50 inches. This does not allow for a possibility of injury from a pallet striking the toes when they are removed from the stack and placed on the floor; and

(c) The pallets are usually pulled along the floor as opposed to being lifted.

3. For these reasons, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 4, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
*Director, Office of Standards, Regulations and Variances.*

Date: March 23, 1989.

[FR Doc. 89-7963 Filed 4-3-89; 8:45 am]
BILLING CODE 4510-43-M

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 89-22; Exemption Application No. D-7590 et al.]**

## Grant of Individual Exemptions; Profit Sharing Plan and Trust of Anesthesiologists Associated of Rome, P.A., et. al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Restated Profit Sharing Plan and Trust Agreement of Anesthesiologists Associated of Rome, P.A. (the Plan) Located in Rome, Georgia**

[Prohibited Transaction Exemption 89–22; Exemption Application No. D–7590]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain real property located in Rome, Georgia to Park Professional Place, a partnership which is a party in interest with respect to the Plan; provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1989, at 54 FR 4342.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Isler Homes, Inc. Profit Sharing Plan (the Plan) Located in Okeana, Ohio**

[Prohibited Transaction Exemption 89–23; Exemption Application No. D–7595]

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale of certain lots of unimproved real property from the Plan to Isler Homes, Inc. (the Employer), a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for the lots at the time of sale and (2) a short-term extension of credit by the Plan to the Employer as a result of the sale, provided the terms of the transaction are no less favorable than the Plan could obtain in an arm's-length transaction with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 24, 1989, at 54 FR 8020.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Profit Sharing Plan and Trust for Thermo Industries, Inc. (the Plan) Located in Charlotte, NC**

[Prohibited Transaction Exemption 89–24; Exemption Application No. D–7629]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continued leasing beyond June 30, 1989, of certain improved real property by the Plan located at 1424 South Bloodworth Street, Raleigh, North Carolina, to Thermo Industries, Inc., a party in interest with respect to the Plan, provided the terms of the transaction are not less favorable to the Plan than those available in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 27, 1988 at 53 FR 52260.

**EFFECTIVE DATE:** July 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Telephone Real Estate Equity Trust (the Trust) Located in New York, NY**

[Prohibited Transaction Exemption 89–25; Exemption Application No. D–7745]

*Exemption*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The past and continued leasing of commerical office space (Lease One and Lease Two) in One Riverwalk Place (the Property), located in San Antonio, Texas, by One Riverwalk Center Joint Venture (the Joint Venture), an entity in which the Trust indirectly owns a 74 percent interest, to Smith, Barshop, Stouffer and Millsap, Inc. (Smith Barshop), a party in interest with respect to the Trust and employee benefit plans participating in the Trust (the Plans); (2) the proposed amendments, renewals or extensions by the Joint Venture to Smith Barshop of Lease One and Lease Two; and (3) the proposed leasing of commerical office space (the Future Leases[2]) in the Property to other persons or entities that may be parties in interest with respect to the Trust and the Plans (except for fiduciaries with respect to the Property)[3] including amendments, renewals or extensions by the Joint Venture of such Future Leases, provided that the terms and conditions of any Leases subject to this exemption are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such Leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption refer to the notice of proposed exemption published on January 30, 1989 at 54 FR 4343.

**EFFECTIVE DATE:** This exemption will be effective June 2, 1982 with respect to Lease One and January 1, 1987 with respect to Lease Two. In addition, this exemption will be temporary in nature and will not apply to any Leases which are originated after five years from the date on which this Final Grant is published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Mead Retirement Master Trust (the Trust) Located in Dayton, Ohio**

[Prohibited Transaction Exemption 89–26; Exemption Application No. D–7789]

*Exemption*

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

[1] Because Robert Isler is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[2] Lease One, Lease Two and the Future Leases are collectively referred to as the Leases.

[3] The term "fiduciary", as used here, includes the American Telephone and Telegraph Company and its affiliates and Eastdil Advisers, Inc. and its affiliates.

of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to (1) the sale by the Trust of certain real property located in Michigan, including certain timber rights pertaining thereto, to the Mead Corporation (Mead), a party in interest with respect to the Trust; and (2) the sale by the Trust of all outstanding common stock of Copmead, Inc. to Mead; provided that all terms of such transactions are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 30, 1989 at 54 FR 4346.

*Written Comments:* 1. The Department received four written comments, most of which did not address issues related to the exemption application. No hearing requests were received by the Department. The substantive comments are summarized as follows:

(A) A concern that the values of the subject real properties are determined by parties who have interests in the subject transactions even if that interest is only pay for work performed;

(B) A general concern about the difficulties inherent in determining the appropriate method of valuing the Trust's interests in the subject real properties;

(C) A concern that the proposed exemption is requested by the Mead Corporation rather than a group of Trust participants or beneficiaries;

(D) A question of the validity of the applicant's assertion that the proposed transaction will enhance the liquidity and flexibility of the Trust assets, as the subject real properties constitute only 4.3 percent of the assets of the Trust; and

(E) A concern that future economic conditions could demonstrate that the interests of the Trust participants would have been better served by retention of the subject properties in the Trust.

Responses to these comments were submitted to the Department on behalf of the Mead Corporation's Investment Policy Committee, which develops and implements investment policies and procedures of the Trust. Those responses are summarized as follows, corresponding in order to the comment summaries listed above:

(A) The response emphasizes that the expertise and independence of the appraisers involved in the valuation process are detailed in the exemption application and that their selection and performance have been overseen on behalf of the Trust by William W. Wommack (Mr. Wommack), who has represented the Trust in negotiations with Mead regarding the terms of the proposed transaction. The response explains that reasonable compensation for Mr. Wommack's services and the services of others involved in the transaction does not compromise their independence and is sanctioned by the Act.

(B) The response acknowledges that some degree of uncertainty is necessarily inherent in valuations such as those involved in the proposed transaction. However, it is emphasized that measures have been taken to ensure that the valuation methods and the resulting proposed terms are comprehensive, appropriate, wholly protective of the Trust and at least as favorable to the Trust as terms of an arm's-length transaction between unrelated parties. In this regard, the applicant emphasized the work of Smith Barney, Harris Upham & Co., Inc., George Banzhaf & Co., Rogers, Casey and Barksdale and Salomon Brothers, Inc., with respect to the proposed transactions.

(C) The response notes that the exemption application was in fact filed on behalf of both the Trust and Mead, that each party independently considered its best interests and negotiated accordingly, that the record amply reflects that the Trust fiduciaries fully met their obligation to act for the exclusive benefit of participants and beneficiaries, and that this transaction was not imposed by Mead upon the Trust.

(D) In response to the concern relating to the percentage of Trust assets involved, it is noted that the Trust holds other real property investments and that the proposed transaction will produce a significant amount of cash to be redeployed in accordance with the Trust's strategic and tactical investment programs.

(E) Finally, the response maintains that the Trust fiduciaries have used every means available to them to determine the appropriateness of the proposed transaction and that the Trust features a diversified ongoing investment program which will continue to adapt to changing economic conditions.

2. The applicant has amplified the record to state that, on the date of sale, the Trust will receive the higher of:

(A) $43,744,060 (in addition, the Trust will receive all rental payments pursuant to the leases to the date of sale);

(B) $43,744,060 adjusted to provide the Trust with the greater of the lease rentals accruing after January 1, 1988 or a specified interest rate on the proposed purchase price to the date of sale, and to reflect changes in the reinvestment potential of the purchase price; or

(C) The fair market value of the Timberlands as of the date of sale computed in the manner set forth in paragraph 4 of the Summary of Facts and Representations in the notice of proposed exemption (in addition, the Trust will receive all rental payments pursuant to the leases to the date of sale).

After consideration of the entire record, including the comments received, the Department has determined to grant the exemption.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Malcolm M. McHenry, M.D., Inc., Defined Benefit Pension Plan (the Plan) Located in Sacramento, California**

[Prohibited Transaction Exemption 89–27; Exemption Application No. D–7800]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan for cash of certain real property (the Real Property) to Malcolm M. McHenry, M.D., trustee of the Plan, and hence a disqualified person with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property as of the date of sale, as established by an independent and qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8025.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**The Lincoln Savings Bank, FSB (Lincoln) Located in New York, New York**

[Prohibited Transaction Exemption 89–28; Exemption Application No. D–7827]

*Exemption*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)

through (D) of the Code, shall not apply to the sale by Lincoln of its subordinated capital notes (the Notes) to the Keogh Plans (the Keoghs) and Simplified Employee Plans (the SEPs) for which Lincoln serves as custodian or trustee, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by Lincoln of the Notes to the individual retirement accounts (the IRAs) for which Lincoln serves as custodian or trustee, provided the Keoghs, IRAs and SEPs pay no more than the fair market value of the Notes on the date of the sale.[4]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 30, 1989 at 54 FR 4347.

*Written Comments:* The Department received one written comment which was in favor of the Department granting the proposed exemption. The Department has considered the entire record, including the comment, and has determined to grant the exemption as proposed.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Elarbee, Thompson and Trapnell Savings Incentive and Salary Deferral Plan and Elarbee, Thompson and Trapnell Profit Sharing Plan (collectively, the Plans) Located in Atlanta, GA**

[Prohibited Transaction Exemption 89-29; Exemption Application Nos. D-7841, D-7842 and D-7843]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved real property (the Tracts), for the total cash consideration of $57,978, by Mr. John R. Trapnell, a party in interest, to his individual accounts in the Plans, provided such amount is not greater than the fair market value of the Tracts on the date of the sale.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8026.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the expresss condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of March, 1989.

**Robert J. Doyle,**

*Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.*

[FR Doc. 89-7993 Filed 4-3-89; 8:45 am]

BILLING CODE 4510-29-M

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**[Application No. D-7612] et al.**

**Proposed Exemptions; South Shore Renal Physicians, P.C. Restated Employees' Pension Plan, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

[4] Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**South Shore Renal Physicians, P.C. Restated Employees Pension Plan (the Plan) Located in Port Washington, New York**

[Application No. D–7612]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, and restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan of money from the Plan to 256 Broadway Realty Co. (the Partnership), a party in interest with respect to the Plan, provided that the terms of the loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

*Summary of Facts and Representations*

1. The Plan is a defined benefit pension plan having 60 participants and total assets of $1,130,715 as of March 31, 1988. South Shore Renal Physicians, P.C. (the Employer) provides professional medical care to patients at Huntington Artificial Kidney Center's dialysis facilities. The Partnership is an equal partnership of four individuals who are also the sole stockholders of the Employer and the four trustees of the Plan.

2. The Plan proposes to make a loan of $150,000 to the Partnership to be used for general business purposes of the Partnership. The loan will be for a period of five years, with interest paid monthly and the principal paid in full at the termination of the loan. The interest rate on the loan will be three percent above the prime rate as quoted by the Citibank, N.A. branch located in Woodside, New York (the Bank). The applicant represents that the Bank is unrelated to the Plan, the Employer and the Partnership. The Bank has stated by letter dated February 6, 1989, that it would be willing to make a $150,000 loan on the same terms, secured by the collateral arrangement described below.

3. The loan will be collateralized by a promissory note of the Partnership and a security agreement which will be duly perfected in accordance with the laws of the State of New York. The loan will be secured by a second mortgage on certain real property (the Property) located in Huntington Station, New York. The Property, which is owned and maintained by the Partnership, consists of a two-story brick medical office building located on 1.1 acres at 256 Broadway. The only existing encumbrance on the Property is a purchase-money first mortgage having an outstanding balance of $266,677 as of November 1, 1988. The Plan obtained an appraisal on the Property from Robert A. Brancato (Brancato), a real estate appraiser located in Rockville Centre, New York, who is independent of the Plan and the Employer. Utilizing the cost, income and comparable sales approaches to value, Brancato estimated the fair market value of the Property to be $1,600,000 as of October 4, 1988. The applicant represents that the collateral will be maintained at no less than 150 percent of the combined amount of the balance of the loan and the existing encumbrance on the Property throughout the term of the loan.

4. James H. Fletcher (Fletcher), an attorney located in Manhasset, New York, has agreed to serve as the independent fiduciary with respect to the proposed transaction. The applicant represents that Fletcher is independent of the Employer and the Plan. Fletcher is licensed to practice law in the District of Columbia and New York State. Fletcher has practiced principally in the areas of trusts and estates, general corporate law and taxation. He has put into effect a considerable number of pension and profit sharing trusts and has served as trustee of two profit sharing trusts and several personal trusts. Fletcher states that he has reviewed the proposed loan and believes that it is a secure, soundly collateralized loan that will be in the best interests of the Plan and its participants. He states that he understands what it means to be a fiduciary under ERISA and that he assumes all the liability related to his function as independent fiduciary with respect to this transaction. Fletcher will monitor the transaction throughout the term of the loan and will assure that all the conditions of the loan are met and that all loan payments are received by the Plan timely and in full. Fletcher will enforce the Plan's rights with respect to the loan and will, if necessary, bring appropriate process against the borrower in the event of default on any loan payments.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) An independent fiduciary of the Plan believes that the transaction is in the best interests of the Plan and its participants and will assure that all the loan payments are received timely by the Plan; (2) the loan will be secured by a second mortgage on the Property, the fair market value of which has been established by an independent appraisal; (3) the terms of the loan represent market rates, including the interest rate set at three percent above the prime rate as quoted by an unrelated commercial bank, and (4) the collateral for the loan will at all times exceed 150 percent of the combined balance of the loan and the existing encumbrance on the Property throughout the term of the loan.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Plastic & Reconstructive Institute of Seattle, Inc. Profit Sharing Trust (the Plan) Located in Seattle, Washington**

[Application No. D–7686]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Plan's proposed: 1) Purchase (the Purchase) for cash of certain real property (the Discrete Space) from Dr. Eugene W. Goertzen (Dr. Goertzen) and his wife (the Applicants), parties in interest with respect to the Plan; and 2) lease-back of the Discrete Space to Plastic & Reconstructive Institute of Seattle, Inc. (the Employer), the Plan sponsor and, as such, a party in interest with respect to the Plan; provided that the terms and conditions of the transactions are at least as favorable to the Plan as to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Duration of Exemption: Ten years from the date of the grant of the proposed exemption.

*Summary of Facts and Representations*

1. The Plan is a defined contribution profit sharing plan with five participants. As of August 15, 1988, the Plan held assets of approximately $700,000. Dr. Goertzen is the sole shareholder of the Employer, a Washington professional service corporation practicing plastic surgery. Dr. Goertzen is also the sole member of the Plan committee, which gives written direction to the Bank of California, the Plan's trustee (the Trustee).

2. The Applicants are the owners of a medical office condominium (the Condo) located at Suite 1290, 1229 Madison Street, in Seattle, Washington. The Condo consists of two suites of 4,679 square feet in the Elmer J. Nordstrom Medical Tower (the Tower) adjacent to the Swedish Medical Center. On December 30, 1986, the Applicants acquired the Condo for $786,072 from the Madison Medical Office Building Limited Partnership (the Madison LP). An estimated $436,852 was added in improvements to the Condo. On December 10, 1986, Richard J. McKown, MAI, and James A. Greenleaf, MAI, of Schueller, McKown & Keenan, Inc. in Seattle (the Appraisers) estimated the fair market value of the Condo to be $1,150,000. The Appraisers subsequently determined the Condo to have a fair market value of $1,250,000 as of June 25, 1987, and $1,345,000 as of September 1, 1988.

3. The Applicants have requested an exemption to permit their sale to the Plan and the Plan's Purchase of the Discrete Space in the Condo consisting of 910 square feet, including the shell and improvements, for an all cash purchase price of $168,000. The Applicants represent that a statutory warranty deed will be executed and recorded upon the Department's final approval of the exemption application.

By update on September 30, 1988 to their prior analyses, the Appraisers determined that the Discrete Space is severable from the Condo because it has outside access to the building common areas and appears to be adaptable as a self-contained medical suite. The Appraisers have evaluated the Discrete Space as having a fair market value "as is" of $168,000 as a legally separate, physically divided, independent area. The Applicants represent that the Discrete Space "as is" would be readily marketable.

4. The Applicants have further requested an exemption to permit the Plan to lease-back the Discrete Space to the Employer under a ten-year lease (the Lease) for $34 per square foot, totalling $34,238 per annum. The Lease provides for annual rental increases in accordance with the Consumer Price Index and for an increase as determined by an independent appraiser of the fair market rental value at least every three years. The initial rate of $34 per square foot will serve as the floor below which the fair market rental value will not be decreased. The Lease further provides that the Employer will pay for maintenance, utilities, taxes and insurance.

5. The terms of the Purchase and the Lease have been reviewed by John E. Mills, Property Manager, of Wright Runstad & Company (WR) in Seattle. WR markets and manages the Discrete Space, the Tower, and other buildings in Seattle and is the managing partner of Madison LP. He represents that he and WR have no present or contemplated future interest in the Discrete Space or bias or personal interest with respect to the parties involved. He determined, on August 29, 1988, that the Lease is commercially consistent with other landlord-tenant transactions in the Tower. In his analysis dated October 28, 1988, Mr. Mills stated that the Tower is 97% occupied and that the Plan could expect to lease or sell the Discrete Space at a reasonable market rate should it so desire. He reviewed the terms of the Purchase and concurs with the Appraisers' value of the Purchase price of $185 per square foot, including improvements.

6. The Plan's directed Trustee has agreed to act as an independent fiduciary with regard to the proposed transactions. As such, the Trustee has reviewed the Purchase as of November 1, 1988 and has concluded it constitutes a prudent investment upon the Department's approval of the proposed exemption. The Trustee has determined that the Discrete Space would represent a minority holding of less than 25% of the current market value of the Plan's assets. The Trustee acknowledges that the quality of the investment is supported by documentation prepared by professionals in the Seattle real estate industry. Moreover, these professionals, according to the Trustee, have analyzed the price, anticipated return on investments and risk, finding them to be acceptable and competitive. The Trustee opines that, upon its review of all documentation, facts and circumstances, the Plan's investment is prudent and adequately diversified.

7. The Trustee as independent fiduciary has represented it will monitor the Lease for its duration and will take any and all appropriate actions to safeguard the interests of the Plan. Moreover, the Trustee as independent fiduciary represents that it has the authority so to act.

8. In summary, the Applicants represent that the proposed transactions meet the statutory criteria of section 408(a) of the Act because: (a) The Purchase will be a one-time transaction consummated for cash; (b) The Purchase price has been determined by qualified independent appraisers; (c) The Deed to the Discrete Space will be duly executed and recorded; (d) The Lease has been reviewed by a leasing agent in the locality and has been found to be commercially consistent with leases executed at arm's-length between unrelated parties; (e) The Plan's Trustee has agreed to act as an independent fiduciary with regard to the proposed transactions; (f) Said independent fiduciary has reviewed the transctions and determined that they are prudent; and (g) The independent fiduciary has represented that it will monitor the Lease for its duration and will take any and all appropriate actions to safeguard the interests of the Plan.

**FOR FURTHER INFORMATION CONTACT:** Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free Number.)

**Morgan & Associates, M.D.'s P.C. Employees' Pension Plan and Trust (the Plan) Located in Bismarck, North Dakota**

(Application No. D-7719)

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) by the segregated account (the Account) in the Plan of Margaret Morgan, M.D. (Margaret Morgan) and Riffat Morgan, M.D. (collectively, the Applicants), to the Applicants, individually, parties in interest with respect to the Plan, of certain real property located in Winnipeg, Canada (the Property), for cash in amount of the greater of the appraised fair market value or the U.S. dollar equivalent of $265,000 (Canadian) on the date of the Sale; provided that the terms and conditions of the Sale are at least as favorable to the Plan as those obtainable by the Plan in an arm's-

length transaction between unrelated parties.

*Summary of Facts and Representations*

1. The Plan is a money purchase pension plan with 56 participants. As of March 31, 1988, the Account held total assets of $2,582,518.50 and is the only participant account to be affected by the proposed transaction. The Applicants are Plan trustees and shareholders and officers of Morgan & Associates, Inc. (the Employer), the Plan sponsor. Dr. Stan Diede is also a Plan trustee. The Employer operates a medical clinic in Bismarck, North Dakota.

2. The Property is located at 124 Bannatyne Avenue, Winnipeg, Manitoba, Canada, and is rented as a parking lot. The Applicants represent that the certificate of title to the Property is physically situated in a fireproof safe in the office of the Employer in Bismarck, North Dakota.[1] The title to the Property is recorded on the deed books of the Province of Manitoba, Canada, in the name of Margaret Morgan, individually and not in trust.[2] The Applicants represent that Manitoba law prohibits the register of deeds from making any entry in the deed registry containing notice of trust, constructive or implied. Attorney F.J. DeVrieze of Thompson, Dorfman, Sweatman, Barristers and Solicitors, in Winnipeg, Canada has provided Section 78(1) of the Manitoba Real Property Act in support of the Applicants' representation.

The Property was purchased on June 1, 1974 from Samuel Morris Golden, who, the Applicants represent, is unrelated to them for a price of $133,000. Since acquisition through August, 1988, the Plan expended $230,429 on insurance, taxes, mortgage interest, exchange, legal and management fees, and maintenance. Total rental income during the holding period has amounted to $376,597 and netted out to $178,168. The average annual rate of return for the property during the holding period has been 7.3%. Margaret Morgan, individually, owns contiguous real estate.

3. O.R. Friesen, AACI, FRI, an Appraisal Manager with S.S. Stevenson & Co. (1972) Ltd. of Winnipeg, Manitoba, appraised the Property on March 1, 1988 to have a fair market value of $265,000 (Canadian). On October 7, 1988, by update to his appraisal, Mr. Friesen determined that Margaret Morgan's ownership of real estate contiguous to the Property did not impose any special value on the purchaser.

4. The Applicants now propose to purchase the Property from the Account at the greater of the appraised fair market value of the Property or U.S. dollar equivalent of $265,000 (Canadian) on the date of the Sale. No commissions or fees will be paid by the Account in connection with the Sale. The Applicants represent that, in 1986, two offers were made by parties unrelated to the that, in 1986, two offers were made by parties unrelated to the Plan for the purchase of the Property, one for $230,000 and the other for $250,000 (Canadian). The Applicants represent that this is the best time for the Plan to sell the Property because the economy of Winnipeg will probably suffer from the recent drought with commensurate negative effect on real estate values.

5. In summary, the Applicants represent that the transaction will meet the statutory criteria of section 408(a) of the Act because: 1) It will be a one-time transaction; 2) It will be consummated for cash; 3) The Account will receive the fair market value of the Property as determined by a qualified independent appraiser; 4) The Account will pay no fees or commissions in connection with the Sale; 5) The Account will divest itself of an illiquid investment in a geographic area with potential economic problems; and (6) The Applicants are the only participants in the Account to be affected by the Sale and they desire that the transaction be consummated.

*Notice to Interested Persons:* Because the Applicants are the only Plan participants to be affected by the transaction, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

**FOR FURTHER INFORMATION CONTACT:** Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Forbes Master Trust (the Master Trust) Located in Tacoma, WA**

[Application No. D-7778]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the acquisition, sale and redemption of Units of beneficial interest (the Units) in the Master Trust, and open-end, non-bank collective investment fund, by employee benefit plans and individual retirement accounts participating in the Master Trust (the Participating Plans) when Forbes Portfolio Management (the Investment Manager) is a service provider and a fiduciary with respect to the assets of the Participating Plans investing in the Master Trust, provided that:

(a) A Participating plan pays no more or receives no less for such Unit than such Participating Plan would have paid or received in an arm's-length transaction with an unrelated party;

(b) Such acquisition, sale or redemption is expressly authorized in writing by a fiduciary of a Participating Plan who is independent of the Investment Manager and who has acknowledged in writing that such fiduciary is an "accredited investor" and that such fiduciary has not relied upon the advice of the Investment Manager with respect to the acquisition, sale or redemption;

(c) No fees or commissions are paid to any person by a Participating Plan by reason of the acquisition, sale or redemption of Units in the Master Trust; and

(d) The Master Trust is an exempt trust under section 501(a) of the Code and only plans qualified under section 401(a) of the Code and individual retirement accounts qualified under section 408(e) of the Code are allowed to participate or continue to hold Units in the Master Trust.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective March 10, 1988.

*Summary of Facts and Representations*

1. The Master Trust was organized on January 1, 1988 as a group trust described in Rev. Rul. 81-100, 1981-C.B. 326. The Master Trust is an unregistered, open-end investment company organized under the laws of the State of Washington. The Master Trust provides qualified pension and profit sharing plans as well as individual retirement accounts with a practical and

[1] Section 404(b) of the Act provides that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States. In this regard, the Department is expressing no opinion whether the Applicants have complied with section 404(b) and the regulations thereunder.

[2] In this regard, the Department notes that section 403(a) of the Act requires that all assets of an employee benefit plan be held in trust by one or more trustees.

convenient way to invest in a diversified pool of publicly-traded equity securities of large, well-capitalized companies. The Master Trust is exempt from Federal income taxes under section 501(a) of the Code. With the exception of the individual retirement accounts, the Participating Plans meet the qualification requirements of section 401(a) of the Code and are exempt from Federal income taxation under section 501(a) of the Code. The individual retirement accounts meet the requirements of section 408(e) of the Code.

2. Pursuant to the terms of the Investment Advisory Agreement (the Investment Advisory Agreement) entered into by the trustees of each Participating Plan, the Investment Manageer serves as the investment manager for the Participating Plans. The Investment Manager is located in Tacoma, Washington. It is a sole proprietorship owned by Mr. Thomas E. Bernhoft (Mr. Bernhoft). As of September 1988, the Investment Manager had total assets of $175,346 and it managed assets totaling $35,092,911.

3. Mr. Bernhoft is a certified public accountant and an investment adviser registered under the Investment Advisors Act of 1940 and the laws of the State of Washington. Mr. Bernhoft has extensive securities experience. He has been doing business as Forbes Portfolio Management since January 3, 1983. Mr. Bernhoft devotes a substantial portion of his working time to the management of the Master Trust of which he serves as the sole trustee. Mr. Bernhoft is not a director, officer or sponsor of any of the Participating Plans. Although Mr. Bernhoft may not be removed by a Participating Plan, such objecting plan may withdraw from the Master Trust upon giving the Investment Manager 20 days' advance written notice.[3]

4. The custodian of the Master Trust (the Custodian) is Seattle-First National Bank, a national banking association maintaining its headquarters in Seattle, Washington. The custodian holds physical possession of the assets of the Master Trust. The Custodian exercises no discretionary authority with respect to the investment of Master Trust assets and it is subject to the direction of the Investment Manager.

5. The applicant requests retroactive and prospective exemption relief for the acquisition, sale and redemption of Units in the Master Trust between the Participating Plans and the Investment Manager since these transactions may result in the commission of prohibited transactions in violation of the Act. In particular, the applicant explains that a prohibited transaction may arise from a Participating Plan's acquisition of Units in the Master Trust in two different contexts. First, the applicant states that a prohibited transaction may arise if the Participating Plan has previously entered into an investment management agreement with the Investment Manager and the Investment Manager is managing the Participating Plan's account on an individual basis. If the Participating Plan wishes to change the nature of its investment from an individual account investment to an investment in the Master Trust, the applicant states that the initial purchase of Units in the Master Trust by the Participating Plan would give rise to a prohibited transaction because of the pre-existing service provider relationship between the Investment Manager and the Participating Plan.

Second, the applicant asserts that a prohibited transaction may arise upon a subsequent purchase of Units in the Master Trust between a Participating Plan and the Investment Manager. Although the applicant is aware of the fact that a Participating Plan's initial purchase of Units in the Master Trust would not be a prohibited transaction in the absence of a party in interest relationship existing between the Investment Manager and the Participating Plan, the applicant notes that a subsequent purchase would give rise to a prohibited transaction inasmuch as the party in interest relationship would then be established.

6. The decision of any Plan to invest in the Master Trust is made exclusively by a fiduciary of that Plan and not by Mr. Bernhoft, the Investment Manager or any of the Investment Manager's employees, officers and directors. The Participating Plan fiduciary must also acknowledge in writing that it is not relying upon the advice of the Investment Manager. In making the decision to invest in such Master Trust, the Participating Plan fiduciary is provided with all of the Master Trust documents. Such fiduciary is afforded an opportunity to ask questions and receive answers from Mr. Bernhoft and the Investment Manager concerning the terms and conditions of an investment in the Master Trust and to obtain any additional information such fiduciary deems necessary.

7. The applicant states that the Investment Manager exercises discretion with respect to assets allocated to its control. However, the applicant represents that the Investment Manager does not act as an investment adviser within the meaning of section 3(21)(A)(ii) of the Act to a plan which proposes to invest in the Master Trust because, in each instance, the Participating Plan trustee who makes the investment decision has not agreed by a written contract or conduct to rely on the Investment Manager's advice as a primary basis for plan investments and such fiduciary is specifically required to so acknowledge. In every instance, the applicant represents that the decision to invest is made by an unrelated plan fiduciary acting on the basis of his own investigation.[4]

8. Interests in the Master Trust are being offered to the Participating Plans pursuant to a Private Placement Memorandum (the Private Placement Memorandum).[5] This document describes, among other things, the Master Trust, the parties involved and their rights, the investment objectives of the Master Trust and the operations and management of the Master Trust. Appended to the Private Placement Memorandum is a copy of the Investment Advisory Agreement by which the trustees of the Participating Plans agree to employ the Investment Manager and assets are committed to the Master Trust. Also attached to the Private Placement Memorandum are the Master Trust Agreement (the Master Trust Agreement) and the Joinder Agreement (the Joinder Agreement). The Master Trust Agreement creates the Master Trust and declares the terms and conditions upon which it operates. Under the Joinder Agreement, the trustees of the Participating Plans adopt the Master Trust and agree to allocate

[3] A Participating Plan may withdraw from the Master Trust as of a certain valuation date (the Valuation Date). The term "Valuation Date" is defined as the last business day of the month and each additional date as Mr. Bernhoft in his discretion as trustee of the Master Trust shall determine.

[4] To the extent that, in the ordinary course of business, the Investment Manager or any of its affiliates provide "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of the Plan's assets in the Master Trust, the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the plan is not sufficient to insulate the adviser from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition, redemption or sales of Units in the Master Trust to section 406(a) violations only.

[5] The applicant represents that no company issuing a security which is contained in the Master Trust's investment portfolio will be a sponsor of a Participating Plan.

assets for purchase of Units in the Master Trust.

9. Participation in the Master Trust is achieved by allowing each Participating Plan to purchase Units of beneficial ownership. Purchase of whole or fractional Units is permitted. The price at which the Units are offered to the Participating Plans is determined on the Valuation Date and is equal to the net asset value of the Unit. Each Participating Plan is required to make a minimum investment of $100,000. Said amount is payable in cash and no sales commissions are charged.

Until March 10, 1988, which was the closing date for the initial offering, subscriptions in the Master Trust were offered at a price of $10.00 per Unit. As of March 10, 1988, 191,435.984 Units in the Master Trust were sold to Participating Plans at a purchase price of $10.00 per Unit.

10. The Units are privately-offered and are not being registered under the Securities Act of 1933, in reliance upon an exemption from registration for transactions by an issuer not involved in any public offering. The Units are being offered only to investors who have the qualifications necessary to permit the Units to be offered and are sold in reliance upon Rule 501 of Regulation D of the Securities Act of 1933 and comparable exemptions under applicable state securities laws. Thus, each Participating Plan must be an "accredited investor" (within the meaning of Regulation D). The fiduciary of the Participating Plan charged with making investment decisions must possess sufficient knowledge and experience in financial and business matters to enable the Participating Plan to evaluate the merits and risks of an investment in the Master Trust. Each Participating Plan must also represent that the Units are being acquired for its own beneficial account and for long-term investment purposes. As a further protection for the Participating Plans, the Master Trust is limiting the interest of any Participating Plan to ten percent of the total assets of the Master Trust.

11. The Master Trust continually offers new Units for sale to qualified investors. The Master Trust may sell additional Units or admit additional plans as of the close of business on the last day of each month, and on such additional date or dates as Mr. Bernhoft shall select, subject to compliance with applicable securities laws, and provided that the additional plans agree to be bound by the terms of the Master Trust documents. The price at which the additional Units are offered to the Participating Plans is equal to the net asset value per Unit. Units are also redeemable at their net asset value. No sales commissions or redemption fees are charged.

12. Pursuant to the Investment Advisory Agreement, the Investment Manager does not receive a separate fee for a particular transaction but instead receives a single fee for investment management services it performs.[6] Such fee is based upon a percentage of assets under management. In addition, the applicant represents that the fee paid by a plan to the Investment Manager will not differ depending upon whether or not the plan elects to acquire Units in the Master Trust or to have its assets managed in a separate account.

13. At least once each year, an audit will be made of the investment funds of the Master Trust by competent auditors who are independent certified public accountants retained by the custodian and who are responsible to the Investment Manager and Mr. Bernhoft. It is anticipated that the independent auditor's report will be disseminated to fiduciaries of the Participating Plans within sixty days following the fiscal year end of the Master Trust.

14. In summary, it is represented that the subject transactions meet the statutory criteria for an exemption under section 408(a) of the Act because (a) Independent fiduciaries of the Participating Plans who are unrelated to the Master Trust, Mr. Bernhoft, the Investment Manager or any other related party maintain complete discretion with respect to the investment of the Participating Plans' assets in the Master Trust; (b) the fiduciaries of the Participating Plans have the opportunity to withdraw their investments pursuant to the procedures of the Master Trust Agreement and in such fiduciaries' individual discretion; and (c) the fees charged the Participating Plans are based upon a percentage of assets under management and the fees are the same regardless of whether the Plans' are invested in the Master Trust or managed in a separate account.

**FOR FURTHER INFORMATON CONTACT:** Ms. Jan. D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Proposed Extension of Prohibited Transaction Exemption (PTE) 82-184 for Certain Transactions Involving the Alaska Teamster-Employer Pension Trust (the Plan) Located in Anchorage, Alaska**

[Application No. D-7797]

[6] The Department is not proposing an exemption for the receipt of fees beyond that provided by section 408(b)(2) of the Act.

*Proposed Extension of Exemption*

The Department is proposing to extend, for a period of five years, a portion of PTE 82-184 (47 FR 52246, November 19, 1982). Authority to grant the proposed extension of PTE 82-184 is given the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

If the proposed extension of PTE 82-184 is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sales of certain residential units (the Units) located near Palm Springs, California, by Desert Horizons, Inc. (Desert Horizons), a wholly owned corporation of the Plan, to parties in interest with respect to the Plan who are not fiduciaries [within the meaning of section 3(21)(A) of the Act], provided the following conditions are satisfied:

1(A) Before a Unit may be sold to a non-fiduciary party in interest, the terms and conditions of the prospective sale to that party in interest, including the price and Unit/lot number and type, shall be advertised in the *Desert Sun* newspaper. The advertisement also shall set forth the price and the terms and conditions of comparable Units sold at Desert Horizons within a reasonable time prior to a prospective sale. Additionally, the advertisement shall indicate that the Unit is available for purchase by all other non-party in interest members of the public at a price and on terms and conditions that are equal to the offer made by the party in interest.

(B) For thirty days from the publication of the advertisement described in paragraph 1(A), no sale of said Unit to the party in interest shall be consummated, even if such party offers more than the advertised price.

(C) During the period between publication and thirty days thereafter, if any non-party in interest member of the public agrees to match or better the price or the terms and conditions advertised, that member (or those members) of the public shall have a right to purchase the Unit that supersedes the right of the party in interest. If, after a reasonable period of time subsequent to the thirty day period, the member or members of the public who have gained the prior right do not prove that they are ready, willing and able to consummate the purchase, the Unit may be sold to the party in interest at a price and on terms and conditions that are equal to or

greater than the advertised price and its terms and conditions.

(D) If, after thirty days from the publication of the advertisement, no non-party in interest member of the public offers to purchase the Unit, the party in interest who made the offer cited in the advertisement shall become an eligible purchaser but only at the advertised price and its terms and conditions or at a price and on terms and conditions that are more favorable to Desert Horizons.

(E) All prospective purchasers shall complete a questionnaire indicating whether they are a party in interest with respect to the Plan.

(2) Prior to the execution of a contract for the sale of a residential Unit to a party in interest, A.N. Advisors (Advisors) and any successor independent fiduciary shall certify in writing that, based on all relevant market factors, the sales price and the terms and conditions for a Unit are not less than its fair market value. The written certification shall also state that: (A) The advertisement procedures set forth in paragraphs 1(A)–(E) have been met; and (B) the terms and conditions (including price) of such sale are at least as equal to those that the Plan could receive in a similar transaction with an unrelated party. In the event that Advisors resigns or is terminated, or a replacement is chosen after its contract expires, the Plan shall notify the Department's Office of Regulations and Interpretations of the name and qualifications of a prospective successor fiduciary and the reasons for the change. Solely for the purposes of continuing the effectiveness of this exemption, appointment of such successor independent fiduciary shall not be effective until the receipt by Desert Horizons of the Department's approval.

(3) The Plan and/or Desert Horizons shall maintain accurate records demonstrating compliance with the conditions of this exemption for all party in interest transactions. The Plan and/or Desert Horizons shall make available to the Department such records, including the written certification described in paragraph (2).

**EFFECTIVE DATES:** If granted, this proposed extension of PTE 82–184 will expire five years from the date of the grant.

*Summary of Facts and Representations*

1. The Plan is a defined benefit, collectively-bargained, multiemployer pension plan established in 1966 between certain contributing employers and Local Union 959 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). The Plan is administered by a board of trustees (the Trustees) consisting of four employer and four union representatives. As of December 1, 1988, the Plan had 5,000 participants and total assets of $415 million. Investment decisions for the Plan are divided primarily between the Trustees and Mercer Meidinger Company.

2. Desert Horizons is a California corporation that owns certain real property in the City of Indian Wells, County of Riverside, State of California. Desert Horizons was created in 1977 under the general corporate law of California. One hundred percent of the stock of Desert Horizons is owned by the Plan.

3. Desert Horizons was created to develop on the property it owns a residential, planned development consisting of single-family homes accompanied by a golf course/country club and clubhouse complex. Initially, Desert Horizons built and marketed 135 residential Units (typically priced in the $235,000 to $375,000 range) along with memberships in the golf course and clubhouse. Subsequent to the marketing of these Units, Desert Horizons decided to change its policy by constructing model homes and then building Units after sales had been consummated. At present, Desert Horizons has constructed 305 of a possible 496 residential Units. Approximately 290 of the 305 Units constructed have been sold. In addition, the golf course and the clubhouse have been completed and are functioning.

4. As noted above, on November 19, 1982, the Department granted PTE 82–184 which conditionally permitted, until May 15, 1985, (a) the proposed sales of the Units to non-fiduciary parties in interest and (b) proposed extensions of credit by the Plans to the parties in interest in connection with the sales. On February 7, 1986, the Department granted PTE 86–16 (51 FR 4828) in order to extend, temporarily, the sales portion of PTE 82–184 until May 15, 1988. It was anticipated that this extension would enable Desert Horizons to offer the Units to all eligible persons through three additional prime (winter) selling seasons.[7] Walker and Lee, an unrelated residential real estate company located in Santa Ana, California, was responsible for determining the price of each Unit. In addition, until his resignation in July 1987, Mr. Jay D. Wahlin (Mr. Wahlin), C.P.A. of Palm Desert, California, served as the independent fiduciary on behalf of the Plan for the proposed sales transactions.[8]

5. Since PTE 82–184 was granted (and subsequently extended by PTE 86–16), there has been only one instance of its utilization. According to the applicant, it is unclear in that case whether the purchaser was a party in interest. However, after close scrutiny by the Plan and in the opinion of the Plan's counsel, it was determined that the homebuyer was not a party in interest to the Plan but merely a service provider to the Union. Despite the limited use of the exemption, the Trustees believe that prudence dictates that an effort be made to extend PTE 82–184 for an additional duration so that Desert Horizons will realize the broadest potential market. This view is also shared by the Weitzman Group, an unrelated, nationally-recognized real estate asset management firm, which concluded, in its financial analysis of the Plan, that it would be most appropriate if Desert Horizons completed the Desert Horizons complex and sold the individual properties on a unit-by-unit basis rather than dispose of the entire complex in any other fashion. Therefore, the Trustees have determined to complete the build-out phase and aggressively market individual Units since the economies of the project have improved dramatically as growth in the Palm Springs area has increased and project sales are brisk. If current sales levels continue, it is anticipated that the project may be completely built in the next several years. Accordingly, the applicant again seeks herein additional exemptive relief to extend the sales portion of PTE 82–184 for five years commencing on the date the notice of proposed extension is granted.

6. Consistent with the terms of a final consent order (the Consent Order) entered on March 23, 1988 by the U.S. District Court for the District of Alaska in *McLaughlin v. Carr*, Civ. No. A–81–017, Advisors, an unrelated investment advisory group and California general partnership, presently manages the Desert Horizon complex including the country club and the golf course. Advisors, which maintains offices in Huntington Beach and San Francisco, California, was formed in 1981 to offer investment advisory services to pension plans established in the United States.

[7] Because of the improved market for second home mortgages, the Plan no longer offers financing to new purchasers of homes at Desert Horizons. According to the applicant, prospective homebuyers are directed to arrange financing from other sources.

[8] Because of Mr. Wahlin's resignation, PTE 86–184 and the subsequent extension thereof (PTE 86–16) could not be utilized after July 1987.

7. Under the Consent Order, and for a period of ten years following its entry, the Trustees are required to delegate the management of the assets of the Plan to one or more persons or firms qualifying as investment managers within the meaning of section 3(38) of the Act. Thus, in accordance with the Consent Order and by the terms of the Investment Management Agreement (the Agreement) dated May 21, 1987, the Trustees decided to turn over the operation, management and investment decisions in connection with Desert Horizons to Advisors. The applicant hereby requests that Advisors, an approved investment manager, be permitted to serve as the new independent fiduciary with respect to the sale of the Units by Desert Horizons to non-fiduciary parties in interest.

8. Although no sales have been made to parties in interest, the price for all of the Units is being established by a team comprised of Mr. Terry Noyer of Advisors and three employees of Desert Horizons. Advisors, however, has the ultimate authority on the pricing of the Units. For each section or cluster of Units constructed, these individuals are responsible for considering such factors as cost, marketability and profits in determining an acceptable price before Units are placed on the market. The prices must also reflect the fair market value of the subject property.

9. Under procedures sought in the exemption extension request, a non-fiduciary party in interest will not be eligible to purchase a Unit until thirty days after the terms and conditions of the prospective sale to that party (including the price and Unit/lot number and type) are advertised in the *Desert Sun* newspaper. The advertisement will also set forth the price and the terms and conditions of comparable Units sold at Desert Horizons prior to the prospective sale and state that the Unit is available for purchase by all non-party in interest members of the public at a price and on terms and conditions that are equal to the offer made by the party in interest.

During the interim between the publication of the advertisement and thirty days thereafter, if any non-party in interest agrees to match or better the price or terms and conditions advertised, that person will have the right to purchase the Unit. This right will supersede the right of the party in interest. If, after a reasonable period of time subsequent to the thirty day period, the non-party in interest is unable to consummate the purchase, the Unit may be sold to the party in interest at a price and on terms and conditions that are equal to or greater than the advertised price.

If, after thirty days from the publication of the advertisement, no non-party in interest offers to purchase the Unit, the non-fiduciary party in interest will be eligible to purchase the Unit but only at the advertised price or at a price on terms and conditions that are more favorable to Desert Horizons. In addition, all prospective purchasers will be required to complete a questionnaire indicating whether or not they are parties in interest.

10. Advisors represents that it sees nothing inappropriate about the continuation of PTE 82–184 and it views such continuation as a distinct advantage for the Plan. Since it is Advisors' duty to build out and sell the Units at their fair market value and at the highest feasible level of profit to Desert Horizons and the Plan, Advisors sees no reason why a potential market, such as non-fiduciary parties in interest, should be lost. While acknowledging that there has been limited use of PTE 82–184 since it was granted and extended by PTE 86–16, Advisors states that it is possible that parties in interest will seek to purchase the Units at their fair market value. In the absence of another extension of PTE 82–184, Advisors explains that if such prospective purchasers are rejected, there will be a real hardship to both the Plan and Desert Horizons. Advisors also believes that there will be no risk to the Plan or its participants and beneficiaries if non-fiduciary parties in interest are allowed to purchase the Units at their fair market value. Advisors is of the opinion that the sales will benefit the Plan, Desert Horizons and the Plan's participants and beneficiaries because the sales will allow the Plan to maximize its investment rate of return, increase the profitability of the project, allow Advisors to complete the sale of the Units at an earlier date and enable the Plan to sell the Units to the broadest market spectrum.

Advisors will monitor all sales transactions throughout the duration of the proposed extension period and provide written certification that the Units are not sold for less than their fair market values and that established procedures are followed. Because it is bound by the terms of the Consent Order and the Agreement, Advisors states that it presently monitors all sales transactions and that it must do so until the Agreement expires or it terminated or the Desert Horizons project is completed. As such, Advisors represents that it ensures that the sales price of each Unit is based on the fair market value of the property and it states that it will do so for any sales that are made to non-fiduciary parties in interest. Advisors also agrees to take all actions that are necessary and proper to enforce and protect the interests of the Plan and its participants and beneficiaries. With regard to the sale of Units to parties in interest, Advisors represents that it will make sure that no such sales are made to parties in interest who are fiduciaries. Advisors further will ensure that non-fiduciary parties in interest pay fair market value for any properties they acquire in the Desert Horizons complex and are treated in a manner comparable to all other members of the public.

11. In summary, it is represented that the proposed transactions will satisfy the terms and conditions of section 408(a) of the Act because: (a) Desert Horizons will have a larger group of potential buyers for the Units; (b) each transaction will be conducted on arm's length terms and will be certified and monitored by Advisors, the independent fiduciary for the Plan; and (c) the sale of the Units will be conducted at their fair market value.

*Notice to Interested Persons:* Notice of the proposed extension of PTE 82–184 will be provided to all interested persons by publication in the Alaska Teamster newsletter within 40 days of the publication of the proposed extension notice in the **Federal Register**. Such notice of proposed extension shall include a copy of the proposed extension notice as published in the **Federal Register** and shall inform interested persons of their right to comment. Written comments are due within 70 days of the date of publication of the notice of proposed extension in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Columbia Orthopaedic Group Integrated Profit Sharing Plan and Trust (the Plan) Located in Columbia, Missouri**

[Application No. D–7798]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the

Code shall not apply to 1) the acquisition of first mortgage bonds (the bonds) issued by C.O.G. Leasing Company (COG Leasing) by the individual accounts (the Accounts) in the Plan, provided the terms of the Bonds are the same for the Accounts as for unrelated parties; and 2) the guarantees by the partners of COG Leasing to the Accounts to assure the repayment of the Bonds.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective November 1, 1988.

*Summary of Facts and Representations*

1. The Plan is a profit sharing plan with approximately 59 participants and assets of approximately $2,102,482. The Plan's sponsor, the Columbia Orthopaedic Group (the Group) is a partnership of professional corporations: C.O.G. Spine Associates, P.C.; Glenn L. McElroy, M.D., P.C.; Ronald D. Carter, M.D., P.C.; William G. Quinn, M.D., P.C.; Peter K. Buchert, M.D., P.C.; Dennis L. Abernathie, M.D., P.C.; Patrick A. Smith, M.D., P.C.; and James F. Eckenrode, M.D., P.C. The Group employs approximately 50 rank and file employees. Its offices are located at 400 Keene Street, Columbia, Missouri.

2. The real property used by the Group is owned by COG Leasing, which is a separate but affiliated leasing partnership. The partners in COG Leasing are substantially the same physicians who own the professional corporations which compose the group.

3. COG Leasing acquired one office building in 1981. In 1986, two adjacent office buildings were acquired, and during 1987 an extensive remodeling and refurbishment of these office buildings was accomplished. As a result, these three separate office buildings are now one large building (the Building) serving the needs of the Group and its patients.

4. In order to permanently finance these improvements and the acquisition of the personal property used in the Building, COG Leasing has issued the Bonds, which are first mortgage bonds sold pursuant to a private placement. The Bonds have serial maturities from one to twenty years after issuance, and bear interest at a variable rate. The collateral to assure repayment of the Bonds is a first mortgage lien against the Building, a perfected first priority security interest in all furniture, fixtures, medical equipment and other personal property owned by COG Leasing, an assignment of the leases in favor of COG Leasing by the Group, and personal guarantees of the individual physicians who are partners in COG Leasing. The effective date of the Bond issue was November 1, 1988.

5. Each of the Bonds is issued in the face amount of $5,000. All Bonds will be sold initially at par, i.e. for their face value. Each Bond will initially bear interest at the rate of 9.75% per annum during the period commencing with the date of issue and ending May 1, 1991. Those Bonds which have not matured by May 1, 1991 will thereafter bear interest at a fluctuating rate which will be determined annually and on the anniversary date of the issue. The interest rate will be equal to the U.S. One Year Treasury Bill Index plus 3.5%. Interest payments on the Bond will be made semi-annually. All Bonds maturing after May 1, 1991 will bear the same rate of interest, regardless of maturity date.

6. The Plan is an individually directed account plan which permits participant-directed investment by all participants. The Plan expressly permits the acquisition by the Plan of employer securities. Numerous participants in the Plan expressed their desire to direct the Plan's trustee to purchase some of the Bonds for their Accounts. An exemption has been requested to permit the Accounts to acquire directly from COG Leasing varying amounts of the Bonds. Some Accounts began purchasing the Bonds as of November 1, 1988, the date of issue. No Account will have more than 25% of its assets invested in the Bonds.

7. The applicants represent that after these Bonds have been acquired by the Plan, the Plan will hold less than 25% of the aggregate amount of the Bonds to be issued. Furthermore, the amount of the Bonds to be held by entities related to the Group and COG Leasing will constitute less than 50% of the issue then outstanding. Immediately following the acquisition of the Bonds, less than 25% of the Plan's assets will be invested in the Bonds. As of February 6, 1989, the Plan had invested $480,000, or approximately 23% of its assets, in the Bonds.

8. Mr. W. Michael Stroupe, Executive Vice President, Lending, of Boone County National Bank (the Bank) in Columbia, Mo., has represented that the Bank, which is the Plan's trustee, purchased $1,690,000 of the COG Leasing Bonds on November 1, 1988 for its own portfolio. Mr. Stroupe represents that the Bonds constitute an excellent asset based on the credit worthiness of the borrower, the quality of the security, and the rate of return. Mr. Stroupe represents that the Bonds purchased by the Plan have been purchased on exactly the same terms as the Bonds purchased by the Bank, except for possibly having different dates of maturity. The Bank represents that, as a major purchaser of the Bonds, it worked with COG Leasing in establishing the terms of the Bond issue. As a result, the Bonds were issued on terms that parallel those the Bank would have used in issuing a conventional Bank loan to COG Leasing. The Bank further represents that it would have purchased even more of the Bonds for its own portfolio had they been available.

9. Ms. Elizabeth M. Witte and Mr. Teddy J. Blaylock, independent appraisers in Columbia, Mo., have appraised the Building as having a fair market value of $4,820,000 as of January 23, 1989. This value includes the personal property owned by COG Leasing. Since it is intended that $2,700,000 of Bonds will be issued, the applicants represent that the colleteral/loan ratio will be approximately 180%. The applicants represent that should additional Bonds be issued in the future, the colleteral/loan ratio will always be at least 150%, and no Account in the Plan will ever hold in excess of 25% of its assets in the Bonds.

10. In summary, the applicants represent that the transactions meet the criteria of section 408(a) of the Act because: 1) Purchase of the Bonds by the Accounts have been and will be on the same terms as those purchased by unrelated parties; 2) no Account has invested or will invest more than 25% of its assets in the Bonds; 3) independent appraisers have appraised the collateral for the Bonds as having a fair market value 1.8 times the value of the Bonds to be issued; and 4) all purchases of the Bonds have been and will be at the direction of Plan participants who desire that such transactions for their individual accounts be consummated.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Hanson, Toller, and Lockwood M.D.'s Profit Sharing Plan and Trust (the Plan) Located in Yuba City, California**

(Application No. D-7828)

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the

Code, shall not apply to the Plan's proposed sale (the Sale) of the Lakeridge Athletic Club (the Club) located in El Sobrante, California, to Dr. John W. Lockwood (Dr. Lockwood) and his wife Julia (the Applicants), parties in interest with respect to the Plan, of a total Sale price of $2,200,000 in cash; provided this amount is not less than the appraised fair market value of the Club at the time of Sale and provided further that the terms and conditions of the Sale are at least as favorable to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan with approximately 15 participants and $2,357,581 in total assets as of June 30, 1987. The trustee of the Plan (the Trustee) is Anthony M. Nichols, a certified public accountant with Nichols Accountancy Corporation in Marysville, California. Dr. Lockwood is a plan participant and a shareholder of Hanson, Toller, and Lockwood M.D.'s (the Employer). The Employer is a medical corporation operating in Yuba City, California.

2. The Club is located on approximately six acres at 6350 San Pablo Dam Road, in El Sobrante, California. The Club consists of land, a 20,000 square foot two-story building thereon, improvements thereto, related equipment and an on-going business. The Club includes, but is not limited to, such recreational and health facilities as five racquetball courts, exercise and fitness rooms, basketball court, whirlpool, spa, sauna, weight and changing rooms, restaurant, pro-shop boutique, four lighted tennis courts and an outdoor Olympic-size swimming pool.

The Plan became the co-owner of the Club on or about October 13, 1982 at the conclusion of a foreclosure proceeding in California state court against the borrower of $165,000 from the Plan. The Plan had been a co-owner of a first lien on the Club securing the loan. The Plan expended $95,130 to buy out the co-holder of the first lien, as well as $1,182,140 to improve and operate the Club as an on-going business through June 30, 1987.

3. The Applicants have requested an exemption to permit the Plan to sell the Club for a total Sale price of $2,200,000, payable in cash to the Plan at closing. The Applicants represent that the Plan will pay no fees, commissions or expenses in connection with the Sale.

4. The Club was appraised on April 30, 1988 by Edgar Holton, a certified public accountant with Edgar Holton Accountancy Corporation in San Francisco, California. In formulating his appraisal, Mr. Holton received information, financial statements and documents from the Club and various real estate brokers and appraisers, analyzed industry data, including that from International Racquet Sports Association, a trade organization, and physically inspected the Club premises. Mr. Holton has determined that no similar athletic clubs are within a twenty-five mile radius of the Club's location, which includes the Oakland, Berkeley and San Francisco areas. He concluded that the total fair market value of the Club, including all assets, is $1,875,000, based on the capitalization of Club earnings.

5. An independent fiduciary for the Plan, First Independent Trust Company (FITC), has agreed to act on behalf of the Plan for the Sale. FITC, a state chartered bank in Sacramento, California received its charter from the California State Banking Department in 1975 in accordance with the California Financial Code. FITC provides trust services for governmental, multi-employer, 401(k), and other types of retirement plans. A special services of FITC is the providing of comprehensive trustee, administrative, consulting, and management services for ERISA pension and profit sharing plans. From the sponsorship of nationally-approved standardized and nonstandardized prototypes to the discretionary management of retirement portfolios, FITC incorporates ongoing operation and management of over 2,500 retirement plan accounts, comprising trust assets in excess of $90 million, and involving real estate trust assets of $8.7 million.

FITC maintains a Department of Real Estate to supervise the daily property management, mortgage origination and servicing, and real estate processing activities of its employee benefit trust clients. FITC has represented that it understands and acknowledges its duties, responsibilities and liabilities under the Act in acting as a fiduciary with respect to the Plan. FITC's staff has had extensive experience under the Act and many of its employees maintain ongoing memberships in one or more of the following organizations: International Foundation of Employee Benefit Plans; National Institute of Pension Administrators; National Pension Real Estate Board; Trust and Financial Services Committee, California Banking Association; California Trustee Association; and Greater Sacramento Employee Benefit Roundtable.

Prior to becoming the Plan's independent fiduciary on September 19, 1988, FITC had no relationship with the Employer, the Trustee, or any one or more of Dr. Hanson, Toller, and Lockwood.

6. Deno Evangelista, President of FITC, has analyzed the proposed Sale and concluded that it is in the best interests of the Plan and the Plan participants for the following reasons:

(a) The Plan will maximize the value of the asset, the Club, upon the Sale;

(b) The liquidity offered by the cash proceeds recovered will:

(i) Provide cash for required distribution of lump sum payments upon separation of service and payments to retiring participants and the beneficiaries of deceased participants;

(ii) Promote an opportunity for investment diversification of Plan assets;

(iii) Minimize the inherent and concentrated risk associated with a real property-related asset, especially the active conduct of a business with substantial liability exposure to the Plan; and

(iv) Enable the Plan to invest in high quality debt obligations, including, *Inter alia*, U.S. Treasury bills, with a steadier stream of income than the Club's earnings.

7. FITC views that the terms of the proposed Sale compare very favorably with the terms of similar transactions between unrelated parties because: (a) the total cash down payment will be 100% of the total purchase price, which the Plan will receive immediately at the Sale's closing with no waiting period whereas, in similar transactions between unrelated parties, the down payment usually ranges between only 20% and 30% with the balance payable in twenty to twenty-five years; and (b) in a customary transaction between unrelated parties, there would normally be a substantial brokerage commission, whereas, in the proposed transaction with the Applicants, there is no brokerage commission whatsoever, thus increasing the net proceeds to be received by the Plan.

8. FITC has also determined that, because the Plan's operation of the Club is subject to considerable risk and management problems, the obtaining of an all-cash payment from the Applicants should be an objective of the fiduciary so as to insure liquidity for the Plan to pay necessary benefits. During the continued Plan operation of the Club business, the Plan only has recourse to actual earnings of the Club. Such health clubs are generally considered rather risky and subject to considerable fluctuations in income and expense with

no assurance of a steady stream of income.

FITC believes that, because the Club constitutes 78% of Plan asset, a fiduciary who retains the interest in the Club has substantially no diversity of investments and is exposed to the risk of large losses. Since the Plan, under the terms of the proposed transaction with the Applicants, will obtain a substantial return on its reinvestment of the all-cash payment, FITC concludes that, under the circumstances, it is prudent to sell the Club and diversity Plan assets. For those reasons, FITC has determined that the terms of the proposed transaction are considerably more advantageous to the Plan than would be the normal terms of a similar transaction between unrelated parties.

9. In summary, the Applicants represent the criteria of section 408(a) of the Act have been met because: (a) The Sale will be a one-time transaction; (b) the proposed transaction will be consummated for all-cash payment to the Plan at closing; (c) the Plan will pay no fees, commissions or expenses in connection with the Sale; (d) the proposed Sale will enable the Plan to divest itself of liquid property which constitutes 78% of Plan assets; (e) a qualified appraiser has determined the fair market value of the Club; (f) the Plan will receive a Sale price in excess of the fair market value as determined by a qualified appraiser; (g) an independent fiduciary has analyzed the terms of the proposed Sale and has opined that they are even more advantageous to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (h) an independent fiduciary has concluded that the Plan's proposed Sale to the Applicants is in the best interest of the Plan.

**FOR FURTHER INFORMATION CONTACT:** Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of March, 1989.

**Robert J. Doyle,**

*Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.*

[FR Doc. 89-7994 Filed 4-3-89; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:00 a.m. to 5:00 p.m. on Monday, May 22, 1989.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 1989.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/786-0322.

**Stephen J. McCleary,**

*Advisory Committee, Management Officer.*

[FR Doc. 89-7872 Filed 4-3-89; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit issued under the Antarctic Conservation Act of 1978. Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On February 17, 1989, the National Science Foundation published a notice in the **Federal Register** of permit allocations received. A permit was issued to the following individual on March 21, 1989: Polly A. Penhale.

**Charles E. Myers,**

*Permit Office, Division of Polar Programs*

[FR Doc. 89-7882 Filed 4-3-89; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Astronomical Sciences

*Date & Time:* April 20 and 21, 1989, 9:00 pm–5:00 pm

*Place:* National Science Foundation, Room 540

*Type of Meeting:* April 20 and 21, 1989, Open

*Contact Person:* Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488)

*Summary Minutes:* May be obtained from the contact person at the above address.

*Purpose of Committee:* To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

*Agenda:*

*Thursday, April 20*

Status of AST Division Items; Collapse of Green Bank 300-Foot Telescope and Related Items; Report of Subcommittee on Functioning of ACAST; FY 1990 Budget and FY 1991–FY 1995 Long-Range Plan.

*Friday, April 21*

NASA Plans for Data Analysis; Continuation of Discussions from Previous Day.

March 30, 1989.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 89–7910 Filed 4–3–89; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–320]**

### Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2; GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on April 13, 1989, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public. Less than 15 days notice is being given because of late confirmation of topics for the meeting.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation. The licensee will also discuss the remote reading radiation monitoring system and the schedule and proposed funding for the remainder of the cleanup. The NRC staff will provide a status report on the review of the licensee's post-defueling monitored storage proposal for TMI–2.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1373.

Dated March 30, 1989.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 89–7944 Filed 4–3–89; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–499]**

### Houston Lighting & Power Co., et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–80 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas (the licensees) which authorizes operation of the South Texas Project, Unit 2 (the facility) at reactor core power levels not in excess of 3,800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

On December 16, 1988, the Commission issued Facility Operating License No. NPF–78 to the licensees which authorized operation of South Texas Project, Unit 2, to five percent of reactor power (190 megawatts thermal). License NPF–80 supersedes NPF–78.

The South Texas Project, Unit 2 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on December 9, 1988 (53 FR 49804), December 16, 1988 (53 FR 50604) and December 16, 1988 (53 FR 50605).

For further details with respect to this section, see (1) Facility Operating License No. NPF–80, with Technical Specifications (NUREG–1346) and the Environmental Protection Plan; (2) the Commission's Safety Evaluation Report, dated April 1986 (NUREG–0781), and Supplements 1 thru 7; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement, dated August 1986 (NUREG–1711).

These items are available for inspection at the Commission's Public Document Room located at 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF–80 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1 thru 7 (NUREG–0781) and the Final Environmental Statement (NUREG–1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office 37082, Washington, DC 20013–7982 or by calling (202) 275–2060 or (202) 275–2171. All orders should clearly identify the NRC publication

number and requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland this 28th day of March 1989.

For the Nuclear Regulatory Commission.

**George F. Dick, Jr.,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-7948 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-344]**

## Portland General Electric Co., et al., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 151 to Facility Operating License No. NPF-1, issued to Portland General Electric Co., *et al.* (the licensee), which revised the Technical Specifications for operation of the Trojan Nuclear Plant, located in Columbia County, Oregon.

The amendment was effective as of the date of issuance.

The amendment deletes the Uranium-235 fuel enrichment limit as fuel assemblies from the Technical Specifications, and authorizes the storage and use of new fuel assemblies with enrichment of up to 4.5 weight percent.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17807). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 1, 1988 as supplemented August 5, 1988, (2) Amendment No. 151 to License No. NPF-1, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 92707. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 17th day of March, 1989.

For the Nuclear Regulatory Commission.

**Roby B. Bevan,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-7950 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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## Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

**[Docket No. 50-333]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would revise the Technical Specifications (TS) pertaining to the following TMI Action Plan Items set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements" and as requested by the staff's Generic Letters 83-02 and 83-36:

I.A.1.3 Shift Manning
II.K.3.3 Report Safety and Relief Valve Failures and Challenges
II.B.3 Post-Accident Sampling
II.F.1.1 Noble Gas Effluent Monitors
II.F.1.2 Sampling and Analysis of Plant Effluents
II.F.1.3 Containment High-Range Monitor
II.F.1.4 Containment Pressure Monitor
II.F.1.5 Containment Water Level Monitor
II.F.1.6 Containment Hydrogen Monitor

Initially the Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing addressing these issues was published on November 19, 1986 (51 FR 41866). This notice was based on information supplied by the licensee dated December 6, 1984, as supplemented October 20, 1986.

However, in order to more fully address some of the NUREG-0737 issues listed above, the licensee has submitted a letter dated October 18, 1985. This letter responds to questions raised by the NRC staff regarding justification where the licensee's position on proposed changes differed from the guidance provided in Generic Letter 83-36 and is the subject of this notice.

Specifically, the submittal transmitted supplementary information concerning the following NUREG-0737 Items which are not addressed by the other submittals:

(a) *Item II.F.1.3 Containment High-Range Radiation Monitor:* The NUREG-0737 guidance states that two channels remain operable. The TS change proposed by the licensee would require that one out of two channels must remain operable.

(b) *Item II.F.1.4 Containment Pressure Monitor and Item II.F.1.5 Containment Water Level Monitor:* The NUREG-0737 guidance states that two channels for each parameter remain operable or an inoperable channel be restored to service within seven days or the plant shutdown within seven days. The TS change proposed by the licensee would require that the inoperable channel be restored in 30 days or either an alternate monitoring method be initiated or the plant shutdown in 48 hours.

(c) *Item II.F.1.6 Containment Hydrogen Monitor:* The NUREG-0737 guidance states that two channels should remain operable and that if both are lost, the plant must be shutdown within seven days. The TS change proposed by the licensee would require that the inoperable channel be restored within 30 days or either an alternate monitoring method be initiated or the plant shutdown.

In each case, the proposed change is an enhancement over the present TS requirement.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed

amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information. For Items II.F.1.3, II.F.1.4, and II.F.1.5, the approach is consistent with the fact that plant equipment could be divided into three categories: (1) Equipment necessary to prevent an accident; (2) equipment used to mitigate an accident; (3) equipment used for monitoring during and following an accident. The TS is consistent with a "defense in depth" approach and is appropriate for monitoring equipment (the third category given above) which is used following a low probability accident. For Item II.F.1.6, the Containment Oxygen Monitor supplies redundant information for which there is a separate TS requirement and action statement for this instrumentation. In addition, the proposed action for all these statements are consistent with the action statements for other accident monitoring instrumentation (criteria which is also allowed by NUREG–0737). Therefore:

(1) The proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed accident monitoring instrumentation does not affect previous accident probability analyses.

(2) The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated, because no new mode of failure is introduced.

(3) The proposed amendment would not involve a significant reduction in the margin of safety, because additional information provided to the operator following an accident would enhance the safety of the plant.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analyses. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 4, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects

that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, of may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washingfton, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator would be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 6, 1984 supplemented October 18, 1985 and October 20, 1986 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washingfton, DC 20555, and at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 29th day of March.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–7949 Filed 4–3–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

## The Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District (SMUD, the licensee) is the holder of Facility Operating License No. DPR–54 (the license) which authorizes the operation of the Rancho Seco Nuclear Generating Station (Rancho Seco) at a steady-state power level not in excess of 2,772 megawatts thermal. The facility consists of a pressurized water reactor (PWR) located in Sacramento County, California. This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the reactor containment building and systems and components which penetrate the containment. Section III.D of Appendix J requires that local leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than two years.

Rancho Seco was last shut down for refueling in the summer of 1985 and local leak rate tests were performed at that time. Following the refueling, the plant remained in cold shutdown through 1986 and 1987 while modifications to upgrade the plant were completed.

In anticipation of plant heat-up and restart during the fall of 1987, local leak rate tests, that can only be performed while the plant is in cold shutdown, were again performed in the summer of 1987. Due to unexpected delays, the plant did not restart until March 1988.

Rancho Seco Technical Specifications require that local leak rate tests be completed once every 24 months in accordance with 10 CFR Part 50, Appendix J. Integrated containment leak rate tests are conducted 3 times in 10 years to ensure that following a postulated airborne radioactive release inside containment, leakage from the containment will not cause radioactive exposures at the site boundary to exceed the limits specified in 10 CFR Part 100. Local leak rate tests of individual containment penetrations (potential leak paths) are performed as interim checks of containment integrity.

In the case of Rancho Seco, due to schedule perturbations associated with plant restart following the 27-month shutdown and a subsequent prolonged power ascension program, the synchronism between local leak rate tests and refueling schedules was disturbed. Since the 1988 restart, the plant has not been in cold shutdown for any extended period and the licensee has been unable to complete all leak rate tests that require cold shutdown as a prerequisite. Based on the 24-month interval, the next series of leak rate tests are required to be completed in the summer of 1989. The next refueling and cold shutdown is scheduled in the fall of 1989. Due to the unusually long period between extended cold shutdowns, Rancho Seco cannot complete the local leak rate tests within the prescribed interval unless the plant is shut down and cooled to cold shutdown.

III

By letter dated December 30, 1988 and supplemented on March 6, 1989, the licensee requested a change to the Rancho Seco Technical Specifications to extend the period between local leak rate tests to a period that would coincide with the next scheduled reactor refueling. On February 15, 1989, the licensee requested an exemption from 10 CFR Part 50, Appendix J to complete the regulatory process involved with modifications of local leak rate test requirements.

IV

From the standpoint of additional risk to the health and safety of the general public, a one-time extension of not more than six months to the normal schedule for performing local leak rate tests is virtually insignificant. The 24-month interval requirement for containment penetrations is intended to be enough to prevent significant deterioration from occurring and long enough to permit the LLRTs to be performed during plant outages. Leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some penetrations, because of their intended functions, cannot be tested during power operation. Testing of certain other penetrations during plant operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system). In these situations, the increase in confidence of containment integrity following a successful test is not significant enough to justify a plant

shutdown specifically to perform the LLRTs within the 24-month time period. A detailed staff safety evaluation of this change is included with the associated Technical Specification amendment. The staff has concluded that a one-time extension of the period for local leak rate tests, the extension not to exceed 6 months, will not adversely affect the health and safety of the public and that the requested exemption from the requirements of 10 CFR 50, Appendix J, Section III D.2 should be granted.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and provides only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the following exemption:

Exemption is granted from the requirement of 10 CFR 50, Appendix J, Section III D.2, that requires a maximum 24-month interval between local leak tests for components subject to local leak test requirements as delineated in the Rancho Seco Technical Specifications. The exemption is granted on a one-time basis for local leak rate tests that are currently scheduled to be performed in 1989. This exemption will not extend the interval between local leak rate tests for any individual component by more than 6 months.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will not have a significant effect on the quality of the human environment (54 FR 12696).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 29th day of March 1989.

**Martin J. Virgilio,**

*(A) Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-7951 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-206]

## Southern California Edison Co., et al, Issuance of Amendments to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 120 to Provisonal Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment changes the power supply for motor-operated valve MOV-358 (emergency core cooling recirculation flow to loop "C") from motor control center No. 3 to the Uninterruptible Power Supply to eliminate a single failure susceptibility in the recirculation system valve power supply.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was pubished in the **Federal Register** on December 13, 1988 (53 FR 50143). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to this action and has concluded that an enviromental impact statement need not be prepared because operation of the facilty in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated November 7, 1988, and (2) Amendment No. 120 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 20th day of March, 1989.

For the Nuclear Regulatory Commission.

**Charles M. Trammell,**

*Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.*

[FR Doc. 89-7952 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No 50-397]

## Washington Public Power Supply System (Nuclear Project No. 2); Exemption

I

Washington Public Power Supply System (WPPSS) holds Facility Operating License No NPF-21, which authorizes operation of Nuclear Project No 2 (WNP-2). The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility is a boiling water reactor located in Benton County, Washington.

II

Appendix A of 10 CFR Part 20, "Standards for Protection Against Radiation," defines protection factors for respirators. Footnote d-2(c) of this Appendix states that "No allowance is to be made for the use of sorbents against radioactive gases or vapors."

By letter dated May 10, 1988, WPPSS requested an exemption to 10 CFR Part 20, Appendix A, footnote d-2(c). The licensee submitted this request in accordance with 10 CFR 20.103(e) and 10 CFR 20.501.

Test data and canister qualification information have been provided by WPPSS by reference to Mine Safety Appliances Company (MSA) data submitted in conjunction with similar exemption requests for Farley 1 & 2 by Alabama Power Company dated January 13, 1984, and for San Onofre 1, 2, and 3 by Southern California Edison Company dated March 20, 1985.

The exemption would allow the use of a radioiodine protection factor of 50 for MSA BMR-I canisters to be used at the WNP-2 power reactor facility. Criteria and background information used for the evaluation includes 10 CFR 20.103, 10 CFR 19.12, Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection," Regulatory Guide 8.20, "Applications of Bioassay for I-125 and I-131," NUREG/CR-3403, "Criteria and

Test Methods for Certifying Air Purifying Respirator Cartridges and Canisters Against Radioiodine," and Regulatory Guide 8.8, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable." The NRC staff's discussion and evaluation of the request for exemption follows.

Since a NIOSH/MSHA testing and certification schedule for sorbents for use for protection against radioiodine gases and vapors has not been developed, the NRC staff has evaluated WPPSS's request and verified, as required by 10 CFR 20.103(e), that the licensee has demonstrated through reliable test data and adequate quality assurance measures that the material and performance characteristics of the MSA GMR-I canister can provide the proposed degree of protection (i.e., a protection factor of 50) under the anticipated conditions of use, for 8 hours. Canister efficiency and service life, and the effects of temperature, poisons, relative humidity, challenge concentration and breathing rates on canister efficiency and service life were considered in the staff's technical evaluation. The staff's programmatic evaluations considered quality control/quality assurance, administrative controls, and radiation protection/ALARA, including task preparation and planning, on-the-job and post-task evaluations, use of engineering controls, radiological surveillance, and radiological training.

The licensee has provided by reference reliable test information which verifies that the MSA GMR-I canister will provide a protection factor of 50 over a period of 8 hours of continuous use, provided that the total challenge of radioactive and nonradioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 110 °F, or up to 120 °F provided the dewpoint does not exceed 107 °F. The data provided by MSA showed the breakthrough point to be well beyond 8 hours.

Testing has been conducted under acceptable conditions of cyclic flow, and under worst case conditions for those environmental factors affecting service life: temperature, relative humidity, and challenge concentration of $CH_3I$ (methyliodide/methyl radioiodide), which is the most penetrating of the challenge forms. Data provided from MSA indicate that the MSA GMR-I canisters perform adequately under the accepted test conditions. These conditions—the criteria and test methods—are consistent with those derived for the canisters by the staff from NUREG/CR-3403, and are acceptable.

The licensee, through a planned verification and acceptance of MSA QA controls, has provided commitments that the MSA GMR-I canisters used with a protection factor at WNP-2 will meet standards for quality assurance and quality control which are recognized by NIOSH, compatible with NRC staff positions, and are therefore acceptable. This includes a commitment by MSA to establish a 1% AQL (Acceptable Quality Limit) in a 5 to 10 ppm challenge concentraion of $CH_3I$, 90% relative humidity, 110 °F, 64 LPM cyclic flow, for a service life of 8 hours or more at penetration equal to 1% of the challenge concentration. Testing data referenced by the licensee demonstrated that performance (i.e., service life) of canisters at 100% relative humidity is acceptable.

Coupled with the use of a full facepiece respirator capable of providing a fit factor of greater than 500, the protection factor of 50 is conservative under these conditions. The licensee's application for exemption dated May 10, 1988 limited the use of canisters to property fitted full facepiece respirators capable of providing protection factors of 100. Based on recent deliberations within the American National Standards Institute (ANSI) Committee Z 88.2, the licensee revised this limitation to full facepiece respirators capable of providing fit factors of 500 (letter G.C. Sorensen to U.S. Nuclear Regulatory Commission dated March 3, 1989).

Canister efficiency will be retained for the radioiodine gas or vapors of interest ($CH_3I$, $I_2$, HOI) for the 8-hour time period. To preclude aging, service life will be calculated from unsealing time, including periods of non-use, and the canister will not be used in the presence of organic solvents or in temperatures in excess of 110 °F. Canisters will be stored in sealed humidity-barrier packaging in a cool, dry environment, and discarded after the 8-hour use period to prevent reuse. Through usage restrictions and air sampling, the licensee will preclude exposures to organic vapors and chemicals (such as hexane, toluene, xylene and their derivatives, trichloroethane, methylenechloride, trichlorofloroethane, and Stoddard Solvent) which could cause aging, poisoning or desorption of the adsorbed radioiodines. Plant procedures describing air sampling and administrative controls for detecting and precluding the presence of organic vapors and chemicals will be developed.

Certain limitations and precautions based on NUREG/CR-3403 guidance are necessary for utilization of the sorbent canisters. The staff agrees with the following such limitations and usage restrictions as proposed by the licensee to be included in Plant Procedure PPM 11.2.11.2, "Selection of Respiratory Protection Equipment.":

1. A maximum protection factor of 50 will be used.

2. The maximum permissible continuous use of the canisters will be 8 hours, after which the canister will be discarded. The allowable canister service life will be calculated from the time of unsealing the canister, including periods of nonexposure.

3. Canisters will not be used in the presence of organic solvent vapors or chemicals which would interfere with the canister's ability to absorb radioiodine. The use of organic solvents or chemicals will be prohibited while the GMR-I canisters are in use.

4. Canisters will be stored in sealed, humidity barrier packaging in a cool, dry environment. The GMR-I canisters will be maintained in class "A" storage (temperature and humidity controlled between 60 and 90 °F and 30 and 60%, respectively) except for those maintained for ready issue in the respirator issue area.

5. Canisters will be used only with properly fitted full facepiece respirators capable of providing fit factors of 500.

6. Canisters will not be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1 ppm, including non-radioactive compounds.

7. Canisters will not be used in environments where temperatures exceed 110 °F. Temperatures where GMR–I canisters may be used will be measured each shift and/or coincidentally with operations which heat the work areas to assure that this limit is not exceeded.

In addition to the above limitations, the following controls will be utilized by the Supply System.

1. During initial GMR–I canister implementation, the following program verification measures will be included in PPM 11.2.11.2.

a. Weekly whole body counts of individuals using the GMR–I canister for radioiodine protection will be performed.

b. A whole body count will be given to individuals who exceed 30 MPC hours in seven consecutive days prior to their next entry into a radioiodine atmosphere.

c. If an individual measures 35 nCi or greater iodine uptake to the thyroid

during a whole body count, the individual will be restricted from further entries into radioiodine atmospheres pending a health physics evaluation.

d. A whole body count survey data base will be compiled to coordinate the results of the program.

2. The following procedures and training courses will be updated as necessary to include the required information regarding the proper use and limitations of the GMR–I canisters prior to use for radioiodine protection.

a. PPM 11.2.4.1, "MPC-hour Assessment and Documentation"

b. PPM 11.2.11.2, "Selection of Respiratory Protection Equipment"

c. PPM 11.2.11.3, "Issuance of Respiratory Protection Equipment"

d. 80–RDT–0606–LP, "Respiratory Protection Training"

e. 80–RDT–0606–RT, "Respiratory Protection Refresher Training"

f. 80–HPT–1801–LP, "Advanced Respiratory Protection"

3. To ensure that the MSA GMR–I canisters meet standards for quality control, PPM 11.2.11.2 will require personnel to verify that for each canister used with the protection factor that the seal is intact, the canister shelf life has not expired, and the following MSA label is attached to the GMR–I canister:

"This Canister Meets the NRC Quality Assurance Specification Required for Radioiodine Protection Factor Credit, In Addition To The NIOSHA/MSHA Requirements."

4. Organic solvents and chemicals of concern relative to GMR–I canister use include materials such as paints, paint thinners, freon solvents, organochlorine solvents and isopropyl alcohol. These chemicals are not of concern in areas where GMR–I canisters will be stored since they are purchased in hermetically sealed packaging and are not opened until placed in service.

Administrative controls for chemical usage are specified in PPM 1.13.2, "Chemical Surveillance and Control." This procedure established controls over the ordering, storage, use, transfer and disposal of chemicals which could be harmful to personnel, the environment or plant systems. The indiscriminate use of chemicals is effectively precluded since specific approval for use in WNP–2 work areas is required. In addition to the above, PPM 11.2.11.2 will be updated to include restrictions regarding chemical use when using GMR–I canisters. Specifically, GMR–I canisters will not be allowed in areas where chemicals are being used or have recently been used.

System controls for the emergency Standby Gas Treatment System, defined in Technical Specification 3.6.5.3 and 4.6.5.3, specify the operational conditions and surveillance requirements related to the HEPA and charcoal filters. Since GMR–I canisters will be most likely used in areas served by the Standby Gas Treatment System, proper operability of this system will provide assurance of the proper environment for canister use, i.e. no chemicals.

5. The Supply System has maintained good fuel integrity since startup and is committed to maintaining exposures to airborne radionuclides as low as reasonably achievable (ALARA) per PPM 1.11.2, "ALARA Program Description." Practices and engineering controls used by WNP–2 to minimize radioiodine concentrations include:

a. Local exhaust ventilation is utilized to reduce airborne contamination in work areas where the potential for airborne contamination is high. The drywell purge system is used during reactor shutdown for outages to reduce general airborne contamination.

b. Radioiodine concentrations are reduced during normal operation by use of the off-gas system, condensate demineralizers and Reactor Water Cleanup System. After shutdown, radioiodine concentrations are removed by the Fuel Pool Cleanup System.

c. Currently WNP–2 has maintained relatively good fuel integrity. In the event of failed fuel, the cause of the failure would be investigated and corrected. Radioiodine levels are trended as a means of monitoring for fuel failures.

d. At WNP–2, radiological surveys are conducted frequently during maintenance activities and decontamination conducted accordingly.

e. Maintenance planning takes into account decay of reactor systems to reduce to overall exposure and airborne contamination potential.

The primary basis for WPPSS's request for exemption are the potentials for both work effort reduction and dose reduction. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 30% for tasks requiring radioiodine protection.

The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on the job. The licensee has provided a task analysis which shows that the use of sorbent canisters at WNP–2 can result in significant dose savings and should be an effective ALARA measure.

Item 5 above identifies actions taken by WPPSS to ensure that exposures to radioiodine are as low as is reasonably achievable (ALARA). Item 1 identifies additional whole body counts to be performed during the initial period of usage of the canisters. The licensee's efforts to keep exposure ALARA are consistent with positions in Regulatory Guide 8.8 and are acceptable.

In summary, the NRC staff's review of the licensee's proposal indicates that the actions proposed by WPPSS can result in significant dose savings over alternative methods while still providing effective protection. This exemption would enable the licensee to use a protection factor for air purifying radioiodine gas and vapor respirators in estimating worker exposures from radioiodine gases and vapors. The licensee has provided usage restrictions and controls which can assure an effective radioiodine protection program. The proposed criteria and test methods for verifying the effectiveness and quality of GMR–I canisters are consistent with NRC criteria. The licensee's propsed exemption, with the controls and limitations, meets the positions in NUREG/CR–3403 and Regulatory Guide 8.8, and is acceptable. The actions proposed by the licensee are consistent with requirements of 10 CFR Part 20.103(e), and form an acceptable basis to authorize an exemption in accordance with the provisions of 10 CFR 20.103(e) and 20.501.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, the exemption is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the requirements of Footnote d–2(c) of Appendix A to 10 CFR Part 20.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action which was published in the Federal Register on August 1, 1988 (53 FR 28926). The Environmental Assessment concluded that this action will not have a significant effect on the quality of the human environment, and therefore the Commission has determined not to prepare an environmental impact statement for this exemption.

For further details with respect to this action, see the application for exemption dated May 10, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and

at the Richland Public Library, Swift and Northgate Street, Richland, Washington.

Dated at Rockville, Maryland, this 21st day of March, 1989.

For the Nuclear Regulatory Commission

**Gary M. Holahan,**

*Acting Director, Division of Reactor Projects III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.*

[DR Doc. 89-7953 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-443-OL-1; 50-444-OL-1]**

### Public Service Co. of New Hamsphire et al., Seabrook Station, Units 1 and 2; On-site Emergency Planning Issues; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of March 29, 1989, oral argument on the appeal of the intervenors from the Licensing Board's January 30, 1989, memorandum and order in this operating licensing proceeding will be heard at 1:30 p.m. on Friday, April 21, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.
Dated: March 29, 1989.

**Barbara A. Tompkins,**

*Secretary to the Appeal Board.*

[FR Doc. 89-7945 Filed 4-3-89; 8:45 am]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 29, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

BMC Industries
Common Stock, No Par Value (File No. 7-4308)
Energen Corp.
Common Stock, $1.00 Par Value (File No. 7-4309)
Elscint, Ltd.
Ordinary Shares $.05 Par Value (File No. 7-4310)
Fiat, S.P.A.
American Depository Shares, No Par Value (File No. 7-4311)
Fiat, S.P.A. Preferred
American Depository Shares, No Par Value (File No. 7-4313)
Fiat, S.P.A. Savings
American Depository Shares, No Par Value (File No. 7-4312)
L.A. Gear, Inc.
Common Stock, No Par Value (File No. 7-4314)
Michaels Stores, Inc.
Common Stock, $.10 Par Value (File No. 7-4315)
Metro Mobile CTS, Inc.
Class A Common Stock, $.10 Par Value (File No. 7-4316)
Metro Mobile CTS, Inc.
Class B Common Stock, $.10 Par Value (File No. 7-4317)
Desoto, Inc.
Common Stock, $.10 Par Value (File No. 7-4317)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 19, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-7919 Filed 4-3-89; 8:45 am]

BILLING CODE 8010-01-M

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### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

March 29, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ACM Gov't Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-4319)
Allstate Municipal Income Opportunities Trust
Common Stock, $.01 Par Value (File No. 7-4320)
American Government Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7-4321)
Baker Fentress & Company
Common Stock, $1.00 Par Value (File No. 7-4322)
Baroid Corp
Common Stock, $.10 Par Value (File No. 7-4323)
Cypress Minerals Company
Common Stock, No Par Value (File No. 7-4324)
Kemper Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-4325)
MassMutual Participation Investors
Common Stock, $.01 Par Value (File No. 7-4326)
Patriot Premium Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-4327)
Premier Industrial Corp.
Common Stock, $1.00 Par Value (File No. 7-4328)
Service Merchandise Co., Inc.
Common Stock, $.50 Par Value (File No. 7-4329)
Sovran Financial Corp.
Common Stock, $5.00 Par Value (File No. 7-4330)
TeleCom USA Inc.
Common Stock, $.01 Par Value (File No. 7-4331)
Templeton Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-4332)
Wellman, Inc.
Common Stock, $.001 Par Value (File No. 7-4333)
West Company (The), Inc.
Common Stock, $.25 Par Value (File No. 7-4334)
Zweig Total Return Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-4335)
Andrea Radio Corp.
Common Stock, $.50 Par Value (File No. 7-4336)
International Telecharge
Common Stock, $.01 Par Value (File No. 7-4337)
Acuson Corporation
Common Stock, No Par Value (File No. 7-4338)
American Hoist Company
Common Stock, $1.00 Par Value (File No. 7-4339)
Atomos Energy Corporation
Common Stock, No Par Value (File No. 7-4340)
Bankamerica Corporation
Adj. 7.15% Cum. A Pfd., No Par Value (File No. 7-4341)
Bankamerica Corporation
Adj. 6.00% Cum. B. Pfd., No Par Value (File No. 7-4342)
CRI Insured Mortgage III
Common Stock, No Par Value (File No. 7-4343)
Cyprus Minerals Company

$3.75 cum. Cv. Exch. Pfd. B $50.00 Par Value (File No. 7–4344)
Gemini II
Common Stock, $1.00 Par Value (File No. 7–4345)
Giant Group Ltd.
Common Stock, $1.00 Par Value (File No. 7–4346)
Hydraulic Company
Common Stock, No Par Value (File No. 7–4347)
Jackpot Enterprises
Common Stock, $.01 Par Value (File No. 7–4348)
Manville Corporation (New)
Common Stock, (File No. 7–4349)
Orange Company, Inc.
Common Stock, $.05 Par Value (File No. 7–4350)
Taiwan Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–4351)
Van Kampen Merritt Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7–4352)
Warner Computer Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4353)
Advanced Micro Devices
Dep. Cv. Exch. Pfd., No Par Value (File No. 7–4354)
Airgas Inc.
Common Stock, $.01 Par Value (File No. 7–4355)
Alliance Capital Management LP
Common Stock, No Par Value (File No. 7–4356)
Amcast Industrial Corp.
Common Stock, No Par Value (File No. 7–4357)
American Health Properties Inc.
Common Stock, $.01 Par Value (File No. 7–4358)
Arkla Inc.
$3.00 Cum. Cv. Exch. A Pfd. $.10 Par Value (File No. 7–4359)
Arrow Electronics Inc.
Dep. Cum. Cv. Exch. Pfd. Vtg. No Par Value (File No. 7–4360)
Athlone Industries
Common Stock, $.10 Par Value (File No. 7–4361)
Beckman Instruments Inc.
Common Stock, $.10 Par Value (File No. 7–4362)
Blackstone Target Term Trust Inc.
Common Stock, $.01 Par Value (File No. 7–4363)
Delta Woodside Industries Inc.
Common Stock, $.01 Par Value (File No. 7–4364)
Dixons Group PLC
American Depository Receipts (File No. 7–4365)
Global Income Plus Fund
Common Stock, $.001 Par Value (File No. 7–4366)
Health Care Property Investors
Common Stock, $1.00 Par Value (File No. 7–4367)
High Yield Plus Fund Inc.
Common Stock, $.01 Par Value (File No. 7–4368)
Huntway Partners LP
Common Stock, No Par Value (File No. 7–4369)
Illinois Central Transportation Co.
Common Stock, $.01 Par Value (File No. 7–4370)
Leisure and Technology Inc.
$2.25 Cum. Cv. Exch. Pfd., $.10 Par Value (File No. 7–4371)
Manville Corp.
$2.70 Cum. Pfd., $1.00 Par Value (File No. 7–4372)
Municipal High Income Fund Inc.
Common Stock, $.01 Par Value (File No. 7–4373)
Vornado, Inc.
Common Stock, $.04 Par Value (File No. 7–4374)
American Business Products
Common Stock, $2.00 Par Value (File No. 7–4375)
Banco Bilbao Vizcaya
American Depository Receipts (File No. 7–4376)
Bearings, Inc.
Common Stock, No Par Value (File No. 7–4377)
British Steel PLC
American Depository Shares (File No. 7–4378)
Dresher, Inc.
Common Stock, $.01 Par Value (File No. 7–4379)
Energen Corp.
Common Stock, $.01 Par Value (File No. 7–4380)
Franklin Universal Trust
Common Stock, $.01 Par Value (File No. 7–4381)
Golden Valley Microwave Foods Inc.
Common Stock, $.01 Par Value (File No. 7–4382)
High Income Advantage Trust II
Common Stock, $.01 Par Value (File No. 7–4383)
Hong Kong Telecommunications Ltd.
American Depository Receipts (File No. 7–4384)
Inland Steel Industries Inc.
$3.625 Cum. Cv. Exch. Pfd., $1.00 Par Value (File No. 7–4385)
L.A. Gear, Inc.
Common Stock, No Par Value (File No. 7–4386)
Lomas Mortgage Securities Fund Inc.
Common Stock, $.01 Par Value (File No. 7–4387)
Nuveen N.Y. Municipal Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4388)
Oppenheimer Multi-Gov't Trust
Common Stock, $.01 Par Value (File No. 7–4389)
Santa Fe Pacific Pipeline LP
Common Stock, No Par Value (File No. 7–4390)
Scotty's Inc.
Common Stock, $1.00 Par Value (File No. 7–4391)
Shawmut National Corp.
Common Stock, $.01 Par Value (File No. 7–4392)
SL Industries, Inc.
Common Stock, $.20 Par Value (File No. 7–4393)
Templeton Global Gov't Income Trust
Common Stock, $.01 Par Value (File No. 7–4394)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 19, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–7920 Filed 4–3–89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

### Office of the Under Secretary for Political Affairs

**[Public Notice 1103]**

### Receipt of Application for a Permit for Pipeline Facilities to be Constructed and Maintained on the Borders of the United States

**AGENCY:** Department of State.

The Department of State has received an application from Salmon Resources Ltd. for a permit, pursuant to Executive Order 11423 of August 16, 1968, to construct, connect, operate and maintain at the United States/Canada border four pipelines crossing the St. Clair River between St. Clair County, Michigan and Lambton County, Ontario. Salmon Resources Ltd. (a Wyoming corporation having its principal office located in Lakewood, Colorado) is a wholly-owned subsidiary of Shell Canada Ltd., a Canadian corporation with its principal office located in Calgary, Alberta. The pipelines to be constructed would be used for the transportation of natural gas liquids, propane and butane liquids.

Dated: March 21, 1989.

**Robert M. Kimmitt,**

*Under Secretary of State for Political Affairs.*

[FR Doc. 89–7908 Filed 4–3–89; 8:45 am]

BILLING CODE 4710-08-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Drake Field, Fayetteville, Arkansas

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Fayetteville, Arkansas, for Drake Field, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Drake Field under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before July 26, 1989.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is January 27, 1989. The public comment period ends April 28, 1989.

**FOR FURTHER INFORMATION CONTACT:** Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0612, (817) 624–5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Drake Field are in compliance with applicable requirements of Part 150, effective January 27, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 26, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected airport operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Fayetteville, Arkansas, submitted to the FAA on February 13, 1987, noise exposure maps, descriptions and other documentation which were produced during development of the FAR Part 150 Noise Exposure and Land Use Compatibility Program completed July 28, 1986. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Fayetteville, Arkansas. The specific maps under consideration are depicted in Figure 9, page 42, and Figure 10, page 44, in the submission.

The FAA has determined that these maps for Drake Field are in compliance with applicable requirements. This determination is effective on January 27, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Drake Field, also effective on January 27, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 26, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Department of Transportation, Federal Aviation Administration, Airports Division, Fort Worth, TX 76193–0600.

Mr. Dale Frederick, Airport Manager, Drake Field , 113 West Mountain Street, Fayetteville, AR 72701.

Questions may be directed to the individual named above under the

heading "**FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, January 27, 1989.

Wm. Jack Sasser,

*Manager, Airports Division.*

[FR Doc. 89-7860 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

## Approval of Noise Compatibility Program; Santa Barbara Municipal Airport, Santa Barbara, California

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Santa Barbara under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 11, 1988, the FAA determined that the noise exposure maps submitted by the city of Santa Barbara under Part 150 were in compliance with applicable requirements. On January 27, 1989, the Associate Administrator for Airports approved the Santa Barbara Municipal Airport noise compatibility program. Fourteen of the sixteen recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Santa Barbara Municipal Airport noise compatibility program is January 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for the Santa Barbara Municipal Airport, effective January 27, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the Regional Office.

The city of Santa Barbara submitted to the FAA on August 15, 1986 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from February 1985 through August 1986. The Santa Barbara Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 11, 1988. Notice of this determination was published in the **Federal Register** on August 11, 1988.

The Santa Barbara Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1988, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 16 proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective January 27, 1989.

Outright approval was granted for 14 of the 16 specific program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on January 27, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the city of Santa Barbara.

Issued in Hawthorne, California, February 9, 1989.

**James J. Wiggins,**

*Acting Manager, Airports Division.*

[FR Doc. 89-7831 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

## Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Toledo Express Airport, Toledo, OH

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice to hold a public scoping meeting.

**SUMMARY:** The Federal Aviation Administration (FAA), is issuing this notice to advise the public that a tiered environmental document will be prepared and considered for near term development of an air cargo ramp and sortation warehouse facilities for Burlington Air Express national air cargo hub at Toledo Express Airport. These facilities are needed in an operational state by mid-1990. The document will also consider other airport development actions, envisioned on a longer term basis, to be recommended in an ongoing airport master plan update and 14 CFR Part 150 Study. To ensure that all significant issues related to the proposed actions are identified, a public meeting will be held.

**FOR FURTHER INFORMATION CONTACT:** Leslie S. Haener, Airports Engineer, Federal Aviation Administration, Detroit Airports District Office, 8800 Beck Road, Willow Run Airport—East Side, Belleville, Michigan 48111, (313) 484-3101.

**SUPPLEMENTARY INFORMATION:** The FAA, in cooperation with the Toledo-Lucas County Port Authority, will prepare a tiered Environmental Impact Statement (EIS) for development scheduled to occur in the near term at Toledo Express Airport in connection with air cargo ramp and sortation facilities for the Burlington Air Express National Air Cargo Hub. This development, scheduled for completion in mid-1990, involves the construction, within current airport property boundaries, of the following new facilities:

1. 40 acre concrete ramp for air cargo aircraft.
2. 279,000 s.f. air cargo sortation warehouse.
3. Fuel farm.
4. Access roads.
5. Air cargo aircraft maintenance building.
6. Taxiway connections to Runway 7-25.
7. Taxiway edge lighting.
8. Overlay of existing 1000 foot overrun area on Runway 7/25 to meet stopway criteria on an interim basis until longer term development actions are complete.

In addition to the specific near-term development actions outlined above, this tiered Environmental Impact Statement will consider other development actions which are now envisioned to be recommended at a later time in the ongoing airport master plan update and Federal Aviation Regulations (FAR) Part 150 Study Included as such probable actions at a time yet to be determined are:

9. Extension of primary Runway 7-25 3,300 feet westward, including land acquisition/relocation for clear zone purposes.
10. Extension of taxiway system for Runway 7-25 3,300 feet westward.
11. Installation of Category II Instrument Landing System.
12. Expansion of new BAX Air Cargo Ramp, including possible land acquisition/relocation.
13. Land acquisition/relocation and/or other noise mitigation efforts as determined in FAR Part 150 Study.

Information on the details of these probable actions will be provided to interested agencies and other parties, as they are defined in later studies, to the extent identified during the scoping process referenced below.

Comments and suggestions are invited from Federal, State, and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Copies of materials to be evaluated can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

### Public Scoping Meeting

To facilitate receipt of comments, a public scoping meeting will be held at 1:30 p.m. on May 2, 1989, in the Terminal Building, Lower Level, Toledo Express Airport, Toledo, Ohio.

Issued in Des Plaines, Illinois, on March 20, 1989.

**Stanley Rivers,**

*Manager, Airports Division, FAA, Great Lakes Region.*

[FR Doc. 89-7879 Filed 4-3-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF VETERANS' AFFAIRS

### Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans' Affairs gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held in the Omar Bradley Conference Room located on the 10th floor of the Department of Veterans' Affairs, 810 Vermont Avenue, NW., Washington, DC, on April 24, 1989. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans' Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers.

The meeting will convene at 8:30 a.m. and adjourn at 4 p.m. and is open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend to contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202/233-5983) prior to April 21, 1989.

Dated: March 29, 1989.

By direction of the Secretary.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89-7894 Filed 4-3-89; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 63
Tuesday, April 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 11:00 a.m., Monday, April 10, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 31, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-8048 Filed 3-31-89; 8:45 am]

BILLING CODE 6210-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of April 3, 10, 17, and 24, 1989.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTER TO BE CONSIDERED:**

**Week of April 3**

*Wednesday, April 5*

2:00 p.m.—Briefing on Certification of Radiographers (Public Meeting)

*Thursday, April 6*

10:00 a.m.—Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (Public Meeting)

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting)

a. Policy Statement on Additional Applications of Leak-Before-Break Technology

b. Rulemaking on Early Site Permits, Design Certifications, and Combined Licenses (Tentative)

**Week of April 10 (Tentative)**

*Thursday, April 13*

9:30 a.m.—Briefing on Status of Implementation of Severe Accident Master Integration Plan (Public Meeting)

2:00 p.m.—Briefing on Implementation of Safety Goal Policy Statement (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 17 (Tentative)**

*Monday, April 17*

10:00 a.m.—Discussion of Shoreham Full Power Operating License (Public Meeting) (Tentative)

2:00 p.m.—Discussion/Possible Vote on Peach Bottom Restart (Public Meeting)

*Thursday, April 20*

2:00 p.m.—Briefing on Status of TMI-2 Cleanup Activities (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 24 (Tentative)**

*Tuesday, April 25*

10:00 a.m.—Briefing on the Status of Generic Issues (Public Meeting)

*Thursday, April 27*

10:00 a.m.—Periodic Briefing by Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note.**—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

**Andrew L. Bates,**

*Office of the Secretary.*

March 30, 1989.

[FR Doc. 89-8044 Filed 3-31-89; 2:16 pm]

BILLING CODE 7590-01-M

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

**TIME AND DATE:** 8:00 a.m., April 17, 1989.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

**STATUE:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

8:00 a.m., Meeting—Board of Regents

(1) Approval of Minutes—January 9, 1989; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medical Education Institute; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents.

New Business.

Scheduled Meetings: July 10, 1989.

**CONTACT PERSON FOR MORE INFORMATION:** Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

**L.M. Byrum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

March 31, 1989.

[FR Doc. 89-8020 Filed 3-3-89; 2:15 pm]

BILLING CODE 3810-01-M

# Corrections

Federal Register
Vol. 54, No. 63
Tuesday, April 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 220

[Amdt. No. 57]

### School Breakfast Program; Nutritional Improvements and Offer Versus Serve

*Correction*

In rule document 89-7576 beginning on page 13045 in the issue of Thursday, March 30, 1989, make the following corrections:

On page 13047, in the table, in the first column, under "Meat-Meat Alternates:", the fourth entry should read: "Peanut Butter of other nut or seed butters".

On the same page, in the table, in the fourth column, under "Grades K-12", the ninth entry should read: "2 Tbsp."

**§ 220.8 [Corrected]**

In § 220.8, on page 13048, in the first column, in the first paragraph, the paragraph designation "(e)" should read "(3)".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Permits; Marine Mammals

*Correction*

In notice document 89-6789 beginning on page 11779 in the issue of Wednesday, March 22, 1989, make the following corrections:

1. On page 11779, in the third column, under **SUMMARY**, in the second line, "(NOA Fisheries)" should read "(NOAA Fisheries)".

2. On the same page, in the same column, under **DATES**, in the fifth line, "April 8, 1989" should read "April 18, 1989".

3. On page 11780, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 10th line, "NOA" should read "NOAA".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 2

[Docket No. 81268-8268]

### Amendments of Trademark Rules Governing Inter Partes Proceedings; Miscellaneous Amendments of Other Trademark Rules

*Correction*

In proposed rule document 89-5153 beginning on page 9514 in the issue of Tuesday, March 7, 1989, make the following corrections:

1. On page 9514, in the second column, under **ADDRESSES**, in the seventh line, "Room 108" should read "Room 1008".

2. On page 9515, in the second column, in the second complete paragraph, in the second line, "practices" should read "practice".

3. On page 9516, in the second column, in the third line, "document" should read "documents".

4. On the same page, in the same column, in the second complete paragaph, in the 10th line, "provide" should read "provided".

5. On the same page, in the third column, in the sixth line, "paragraph"was misspelled.

6. On page 9517, in the 1st column, in the 15th line, "Party" should read"party".

7. On page 9518, in the second column, in the paragraph immediately preceding the part heading, in the 10th line, "2.235" should read "2.135".

**§ 2.42 [Corrected]**

8. On the same page, in the same column, in § 2.42, in the first line, between the boldface arrow and the opening parenthesis, insert a boldface opening bracket.

**§ 2.68 [Corrected]**

9. On the same page, in the third column, in § 2.68, in the eighth line, "ha" should read "has".

**§ 2.93 [Corrected]**

10. On page 9519, in the 1st column, in § 2.93, in the 1st line, the 2 boldface arrows should be boldface brackets, and in the 11th line "this" should read "his".

11. On the same page, in the first column, in amendatory instruction 7, the last line should read "by adding new paragraph (b) to read as follows:".

**§ 2.114 [Corrected]**

12. On page 9520, in the first column, in the first and third lines, the directions of the arrows should be reversed.

**§ 2.119 [Corrected]**

13. On the same page, in the same column, in § 2.119(b) introductory text, in the third line, "part" should read "party", and in § 2.119(b)(4), in the first line, the boldface arrow should precede rather than follow the word "The".

**§ 2.120 [Corrected]**

14. On the same page, in the third column, in § 2.120(g)(2), in the ninth line, "response to set" should read "response to a set".

15. The portion of text that begins on page 9520, in the 3rd column, in § 2.120(g)(2), in the 12th line, with the words "the notice of", and ends on page 9521 in the first column, in the 21st line, with the words "than all of the" should be transferred to § 2.120(j)(3)(i) on page 9521, in the first column, and inserted between the words "files" and "admissions" in the 21st line of paragraph (j)(3)(i).

16. On page 9521, in the second column, in § 2.120(j)(8), in the last line, "retained" should read "returned".

**§ 2.121 [Corrected]**

17. On the same page, in the same column, in § 2.121(a)(1), in the 11th line, immediately after "Board", insert "or".

18. On the same page, in the same column, in § 2.121, the portion of text that begins and ends with boldface arrows should be run into the text that immediately precedes it.

**§ 2.122 [Corrected]**

19. On the same page, in the same column, in the heading of § 2.122, the section number and title should appear together on the same line.

**§ 2.123 [Corrected]**

20. On the same page, in the third column, in § 2.123(c), at the end of the 20th line, remove the letter "m".

§ 2.127 [Corrected]

21. On page 9522, in the 2nd column, in § 2.127(e)(2), in the 4th line, insert "to a request" immediately after "response" at the end of the line, and in the 16th line, immediately after "things" insert "produced".

22. On the same page, in the same column, in amendatory instruction 20, "paragraph" was misspelled.

§ 2.129 [Corrected]

23. On the same page, in the third column, in the third line, "late" should read "last".

§ 2.142 [Corrected]

24. On page 9523, in the first column, in § 2.142(b)(2), in the last line, "entirely" should read "entirety", and in § 2.142(f)(6), in the third line from the bottom, "resume" was misspelled.

BILLING CODE 1505-01-D

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 471

[OW-FRL-3491-2]

### Nonferrous Metals Forming and Metal Powders Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

*Correction*

In rule document 89-6308 beginning on page 11346 in the issue of Friday, March 17, 1989, make the following corrections:

§ 471.32 [Corrected]

1. On page 11349, in the first column, in § 471.32(d)(4), in the ninth line, "not" should read "no".

§ 471.33 [Corrected]

2. On the same page, in the 2nd column, in § 471.33(d)(2), in the 13th line, "N-nitrosodimethylamine" should read "N-nitrosodiphenylamine".

§ 471.34 [Corrected]

3. On the same page, in the 3rd column, in § 471.34(d)(2), in the 13th line, "N-nitrosodimethylamine" should read "N-nitrosodiphenylamine".

4. On page 11350, in the first column, in § 471.34(d)(4) introductory text, in the ninth line, "not" should read "no".

BILLING CODE 1505-01-D

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 176

[Docket No. 85F-0400]

### Indirect Food Additives; Paper and Paperboard Components

*Correction*

In rule document 89-5994 beginning on page 10627 in the issue of Wednesday, March 15, 1989, make the following corrections:

1. On page 10627, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 2nd paragraph, in the 12th line, "Which" should read "which".

2. On page 10628, in the second column, in the first complete paragraph, in the second line, "Contain" should read "contain".

3. On the same page, in the same column, under "*A. 1,4-Dioxane*", in the ninth line, "$C_{15}$ $C_{21}$" should read "$C_{15}$-$C_{21}$".

BILLING CODE 1505-01-D

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 110

### Public Hearing on NPRM for Vaccine Information Materials

*Correction*

In proposed rule document 89-6661 beginning on page 11547 in the issue of Tuesday, March 21, 1989, make the following correction:

On page 11547, in the third column, under **SUPPLEMENTARY INFORMATION**, in the eighth line, "8:10 a.m.-10:10 a.m." should read "8:00 a.m.-8:10 a.m."

BILLING CODE 1505-01-D

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. NPDA-2, Notice 3]

### City of New York; Application for Non-Preemption Determination; Invitation to Comment

*Correction*

In notice Document 89-7343 beginning on page 12732 in the issue of Tuesday, March 28, 1989, make the following correction:

On page 12732, in the first column, the **DATES** caption was incorrect and should read as follows:

**DATES:** Comments received on or before May 4, 1989 will be considered before issuance of a decision on the City's application for a waiver of preemption.

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[T.D. 8241]

### Extension of Time to File for Taxpayers Outside the United States and Puerto Rico

*Correction*

In rule document 89-6605, appearing on page 11523, in the issue of Tuesday, March 21, 1989, make the following correction:

In the second column, under the heading **Correction of Publication**, in the second paragraph, "page 776" should read "page 7762".

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

[T.D. 8246]

### Taxpayer Assistance Orders

*Correction*

In rule document 89-6751, beginning on page 11699, in the issue of Wednesday, March 22, 1989, make the following corrections:

1. On page 11699, in the first column, under "**FOR FURTHER INFORMATION CONTACT**", the telephone number should read "202-566-4574".

2. On the same page in the third column, in the second complete paragraph, in the third line, insert "may" between "Ombudsman" and "issue".

BILLING CODE 1505-01-D

federal register

Tuesday
April 4, 1989

Part II

# Department of Education

**Research in Education of the Handicapped; Notices**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Research in Education of the Handicapped

**AGENCY:** Department of Education.

**ACTION:** Notice of final priorities.

**SUMMARY:** The Secretary announces final funding priorities for the Research in Education of the Handicapped program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1989 and 1990.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

**SUPPLEMENTARY INFORMATION:** The Research in Education of the Handicapped program, authorized by Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444), supports research, and related activities, surveys, and demonstration projects relating to the educational and early intervention needs of children with handicaps. Under this program, the Secretary makes awards for research and related activities to assist special educationpersonnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for infants, toddlers, children, and youth with handicaps; to conduct research, surveys, or demonstrations relating to the provision of services to infants, toddlers, children, and youth with handicaps; and research and related activities, surveys, or demonstrations related to physical education or recreation for children with handicaps.

#### Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities twenty-one parties submitted comments on the proposed priorities. The Secretary has also made some technical changes in the wording of the priorities to provide greater clarity and to remove paperwork requirements that can be handled through other means. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows.

*Comment:* One commenter expressed concern that the proposed research priorities address regular education (rather than special education) and reflect more the philosophy of the current administration than the research needs in the field. The commenter felt that the priorities should focus on the "specific instructional and service needs of identified special needs youngsters" rather than the needs of children served in regular education settings.

*Discussion:* All of the proposed priorities focus on educating students with handicaps. The education of most students with handicaps includes experiences and opportunities that encompass regular education as well as special education. A major objective of the Research in Education of the Handicapped program is to produce new information that will lead to improved education of students with handicaps. These priorities reflect a need to provide administrators and teachers with effective tools for assessing and designing the nature of accommodations required by regular and special education in the schools related to the educational needs and learning characteristics of children with handicaps. How we instruct children with handicaps has been, and continues to be, a critical focus of research. Little complementary research on what we teach (i.e. curriculum), and its relationship to how we teach children has received attention. In addition, the pragmatic fit between what and how we teach children with handicaps has implicitly been assumed to be achieved through teacher planning. The nature and extent of regular and special education teacher planning related to units and lessons has not received systematic attention. Therefore, these priorities focus on the total educational program of students with handicaps rather than just the special education component as an isolated service.

*Changes:* None.

*Comment:* Two commenters expressed concern that the Department has not proposed a research priority pertaining specifically and exclusively to education of students with serious emotional disturbance.

*Discussion:* The Secretary announced research priorities for students with serious emotional disturbance in fiscal years 1987 and 1988. Further, students with serious emotional disturbance are an appropriate target population for several of the priorities, including priorities 1, 2, 3, 4, 6, and 7.

*Changes:* None.

*Comment:* One commenter suggested that for priorities 1 and 4 there is an insufficient research knowledge base for developing guidelines for decision-making related to: (a) Determining the appropriateness; (b) establishing priorities; and (c) adapting or modifying curriculum goals and objectives for children and youth with handicapping conditions. The commenter further suggested that the priorities be modified in a manner allowing such a research knowledge base to be established without the requirement of translation of the findings into guidelines for curriculum decision making.

*Discussion:* As written, the language of the priorities does not preclude studies that may establish an expanded research knowledge base for guidelines related to curriculum decision-making. Further, to ensure that the research knowledge base is adequate, the priorities require field tests of the guidelines in at least four school districts which should help to establish their effectiveness.

*Changes:* None.

*Comment:* One commenter suggested that the Secretary consider expanding the social studies part of priority 4 from a kindergarten through grade eight emphasis to a kindergarten through grade twelve emphasis. The commenter also suggested that student writing skills (as required on tests and assignments) be included for research attention under this priority.

*Discussion:* The potential breadth of content, disciplinary perspectives, and tools of inquiry encompassed by a kindergarten through grade twelve social studies curriculum exceeds the resources available. The focus on kindergarten through grade eight represents a compromise premised on curriculum and student enrollment factors. The kindergarten through grade eight social studies curriculum has disproportionately different objectives than the curriculum for grades nine through twelve. Also, by grades nine through twelve the numbers of students with handicaps receiving special education significantly begins to decline. Given fixed resources and the degree and complexity of curriculum issues to be addressed, the proposed priority is already an ambitious activity.

*Changes:* None.

*Comment:* One commenter expressed the concern with priority 1 that without incentives, most school districts would not collaborate with researchers to

accomplish the objectives of this priority. The commenter also suggested that: (1) Given the scope of activities, projects should be funded for a five-year period; (2) the priority should be divided into several separate competitions so that all activities can be accomplished; and (3) characteristics of participating school districts should be described in the priority.

*Discussion:* The Secretary believes that projects supported under this priority will be able to develop working relationships with school districts. The changes based on suggestions regarding project duration and dividing the priority into multiple priorities are not necessary because the current knowledge base is adequate to support the scope of the proposed activities. Further, it is the Department's experience that applicants should be provided flexibility in selecting participating school districts consistent with achieving sound field test procedures.

*Changes:* None.

*Comment:* One commenter suggested that the Department establish a priority for research related to transporting students with handicaps to and from the school setting.

*Discussion.* The Secretary agrees that research on transporting students with handicaps is one of many important issues. While transportation presents schools with significant fiscal, staffing, and logistical issues, as well as affecting access to educational and vocational opportunities for students with handicaps, the scope of these issues could be addressed under the field-initiated research priority.

*Changes:* None.

*Comment:* One commenter expressed concern that several proposed priorities focus on students with handicaps who are educated in regular education settings and, therefore, exclude students with handicaps whose educational placements are in special education environments such as the American School for the Deaf.

*Discussion:* Of the seven proposed priorities under the Research in Education of the Handicaped program, three address research issues related to students with handicaps who are educated in regular education classrooms or students with handicaps for whom the regular education curriculum is appropriate. Because two-thirds of students with handicaps are educated in regular education settings and are appropriately exposed to regular education curricula, the number of priorities devoted to these students is deemed appropriate.

*Changes:* None.

*Comment:* One commenter suggested that a priority be established for therapeutic recreation research.

*Discussion:* The Secretary believes that therapeutic recreation research could be addressed under the field-initiated research priority or several other priorities in which specific topic areas are not indicated.

*Changes:* None.

*Comment:* One commenter suggested that the target group for priority 6 be expanded from junior high school aged students with handicaps to senior high school students as well.

*Discussion:* The priority was targeted at junior high school aged students with handicaps because research indicates that drop-out prevention needs to occur earlier than high school to be effective. However, the Secretary notes that the priority does require projects to follow the students through the senior high school years.

*Changes:* None.

*Comment:* Ten commenters expressed concern that the Department was considering priority 7 "Initial Career Awards" as one strategy for the support of new research investigators in special education, in lieu of the student-initiated research competition. All ten commenters supported continuing the student-initiated research priority.

*Discussion:* The Secretary agrees that the student-initiated research priority is an appropriate tool for encouraging students to become competent special education researchers. In response to the comments, the student-initiated research priority has been included in the Department's budget and planning for fiscal years 1990 and 1991. Because the regulations for the Research in Education of the Handicapped program provide authority for student-initiated research projects (*See* 34 CFR 324.10(g)), a separate priority does not have to be added to the list of biennial priorities.

*Changes:* None.

*Comment:* One commenter raised two questions about priority 7: (1) Are the individuals who are in the initial stages of their careers expected to develop the research application? (2) Are applicants and individuals, as these terms are used in the priority language, the same people?

*Discussion:* In response to question No. 1, the Secretary believes that it would be desirable if individuals who are in the initial stages of their careers prepare the application, but they are not required to. Regarding question No. 2, the answer is no. Under the Research in Education of the Handicapped Program, individuals are not eligible applicants. Therefore, the terms are not synonymous.

*Changes:* None.

*Priorities:* The Secretary establishes the following priorities for the Research in Education of the Handicapped Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

*Priority 1. Research on General Education Science or Mathematics Curricula. (CFDA No. 84.023)*

The purpose of this priority is to support research projects that analyze general education (kindergarten through grade eight) curricula in (1) mathematics or (2) science using a cross-grade (e.g., primary, elementary and middle grades) perspective to determine the compatibility of the scope, sequence, and presentation (including rate, complexity, informational density, and approach for organizing and presenting content) with the learning characteristics and needs of students with handicapping conditions for whom the regular education curriculum is considered appropriate. In planning the research, projects must consider the kindergarten through grade eight curriculum in mathematics or science as a whole, not just as a year-by-year treatment, so that assumptions about students' prior knowledge and skills as well as their need for acquisition, mastery, automaticity, application of skills, and understanding of concepts can be examined. While focusing on the needs of children with handicaps, projects must consider current national initiatives in science or mathematics including those of professional associations and the Federal Government to develop standards and new curricula for use in regular primary, elementary and middle school grades.

Projects must examine existing and potential alternative curriculum approaches to organizing disciplinary knowledge bases in science or mathematics. For example, in science those alternative approaches might include teaching science through teaching facts, rules and principles; through a process of discovering knowledge; or through describing the natural world. Another approach might be an interdisciplinary focus that attempts to integrate other disciplines with science using a thematic approach or focusing on a certain historical

period. In mathematics, alternative approaches to organizing the knowledge base have included designs that emphasize either the logic of the symbol system, or applications associated with its use. Alternative approaches to science or mathematics curriculum design must be described and their implications for educating children with handicaps in kindergarten through grade eight examined.

These alternative approaches for organizing science or mathematics curricula will provide the starting point for analyzing alternative structures for prioritizing, segmenting and arranging science or mathematics content to be covered in kindergarten through grade eight. In addition, potential alternatives for structuring this content must be examined. These analyses must include examination of current curricula scope and sequence, textbooks and supplementary materials. Finally, the structural alternatives for presenting science or mathematics content for kindergarten through grade eight must be examined in relation to the learning characteristics of children with a variety of handicaps, particularly related to needs associated with acquisition, mastery, automaticity, application of skills, and understanding of concepts. The purpose of this activity is to develop guidelines for decisionmaking related to determining the appropriateness of, establishing priorities for, and adapting or modifying, curriculum goals and objectives for children and youth with handicapping conditions. These guidelines must make explicit the factors to be considered in making these decisions. Further, the guidelines must be useful to publishers for textbook revision activities, to teachers for analyzing and prioritizing content for students, and to school district personnel who conduct school building or district-wide curriculum revision activities and textbook evaluation and adoption procedures.

Projects must conduct several field tests to determine the usefulness of the guidelines. These field tests must determine: (1) The usefulness of the guidelines to publishers in the development of new materials and in the revision of existing materials; (2) the extent to which the guidelines help teachers analyze and prioritize content for students; and (3) the utility of guidelines in improving school building or district-wide curriculum revision and textbook evaluation and adoption procedures. Part of the field testing must include obtaining informed judgments about the logic, design, and content of the guidelines from each of the target audiences above. For purposes (2) and (3), the investigators must also conduct field tests in at least four school districts to test the usefulness of the guidelines as implemented in typical settings (classrooms and districts). The target populations for this priority are primary, elementary, and middle school aged students (kindergarten through grade eight) with handicapping coditions. It is anticipated that two cooperative agreements will be funded under this priority: one addressing mathematics curricula and one addressing science curricula.

*Priority 2. Research on General Education Teacher Planning and Adaptation for Students With Handicaps. (CFDA No. 84.023)*

The purpose of this priority is to support research projects that will lead to improved teacher planning, individualization, and adaptation of curricula and instruction for students with handicaps who are educated in general education classrooms. A two-step research program must be conducted that will (1) determine how teachers collect and use student performance data in daily and long range curricular and instructional planning, and (2) develop and field test interventions that increase teacher skills, confidence and motivation in planning, adapting, and individualizing instruction.

In the first step, each project must select one or more school districts and study: (a) The way teachers typically plan instruction, (b) how teachers collect and use student performance data in their planning activities, (c) how teachers adapt curricula and instruction to enhance the learning of students with handicaps, (d) how teachers individualize instruction to meet the unique learning characteristics of students with handicaps, (e) the kinds of support that teachers need to enhance their planning, individualization, and adaptation of curricula and instruction, and (f) teacher and organizational variables that impede effective planning for individualization and adaptation of curricula and instruction for students with handicapping conditions. The projects must select schools that are either representative of the majority of schools related to the skill levels of teachers, administrative emphases, and organizational structures for curriculum, lesson and pupil planning; or schools that represent a range of those attributes from weak to strong. In carrying out this part of the research, projects must use a conceptual framework based on previous research that identifies the hypothesized relationships among teacher variables (e.g., skills, confidence, motivation) and organizational support variables (e.g., planning time, consultants, materials) and variables associated with effective planning, individualization and adaptation strategies for students with handicapping conditions.

In the second step, projects must develop and field test interventions that increase or improve teacher planning, adaptation, and individualization activities for students with handicaps. Interventions must be based on a refined conceptual framework that incorporates the findings from step one of the research, including the hypothesized relationships among teacher and organizational variables and intervention variables associated with increased or improved teacher planning, adaptation, and individualization activities for students with handicaps. Field tests must include measures of the effects of implementing the interventions on teacher skills, confidence, and motivation for carrying out effective planning, adaptation, and individualization activities for students with handicaps. The field test design must employ contrast buildings or classrooms where the interventions are not implemented. Projects must include a variety of procedures and instruments to measure intervention implementation and effectiveness, and the field tests must be conducted in one or more school districts not involved in step one of the project. The major outcomes of each project must be well-defined interventions, procedures that will enable other districts to implement the interventions, and evidence of the extent to which interventions are effective.

*Priority 3. Small Grants Program. (CFDA No. 84.023)*

This priority provides support for a broad range of research projects that can be completed within a 12–18 month time period, are budgeted at $75,000 or less for the entire project period, and are focused on the education of infants, toddlers, children, and youth with handicaps consistent with the purpose of the program as stated in 34 CFR 324.1. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, instrument validation studies, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases.

*Priority 4. Research on General Education Social Studies or Language Arts Curricula. (CFDA No. 84.023)*

The purpose of this priority is to support projects that analyze general education kindergarten through grade eight curricula in (1) social studies or (2) language arts using a cross-grade (e.g., primary, elementary and middle grades) perspective to determine the compatibility of the scope, sequence, and presentation (including rate, complexity, informational density, and approach for organizing and presenting content) with the learning characteristics and needs of students with handicapping conditions for whom the regular education curriculum is considered appropriate. In planning the research, projects must consider the kindergarten through grade eight curriculum in social studies and language arts as a whole, not just as a year-by-year treatment, so that assumptions about students' prior knowledge and skills as well as their need for acquisition, mastery, automaticity, application of skills, and understanding of concepts can be examined. While focusing on the needs of children with handicaps, projects must consider current national initiatives in social studies or language arts including those of professional associations and the Federal Government to develop standards and new curricula for use in regular primary, elementary and middle school grades.

Alternative curriculum approaches to organizing disciplinary knowledge bases in social studies or language arts curriculum design must be included, and their implications for educating children with handicaps in kindergarten through grade eight examined. For example, in social studies such alternative approaches might include social studies as process for conveying facts, events, and historical trends; social studies as a process for teaching values (e.g., citizenship, capitalism, democracy); social studies as a means to teach general social science principles (e.g., the tenets of economics) rather than details related to historical events (e.g., the Great Depression); social studies as a process for teaching problem solving skills by emphasizing cause-effect relationships; or social studies as a process for reflective inquiry. In language arts, these alternative approaches might include language arts as a process for teaching language skills and knowledge for the purpose of transmitting the culture; language arts as a means for teaching skills that have utilitarian value in our society; or language arts as a means for enhancing the cognitive development of students (by giving students tools to access, process, and interpret information).

These alternative approaches for organizing social studies or language arts curricula will provide the starting point for analyzing alternative structures for prioritizing, segmenting and arranging social studies or language arts content to be covered in kindergarten through grade eight. In addition, potential alternatives for structuring this content must be examined. These analyses must include examination of current curricula scope and sequence, textbooks and supplementary materials. Finally, the structural alternatives for presenting social studies or language arts content for kindergarten through grade eight must be examined in relation to the learning characteristics of children with a variety of handicaps, particularly related to needs associated with acquisition, mastery, automaticity, application of skills, and understanding of concepts. The purpose of this activity is to develop guidelines for decision-making related to determining appropriateness of, establishing priorities for, and adapting or modifying, curriculum goals and objectives for children and youth with handicapping conditions. These guidelines must make explicit the factors to be considered in making these decisions. Further, the guidelines must be useful to publishers for textbook revision activities, to teachers for analyzing and prioritizing content for students, and to school district personnel who conduct school building or district-wide curriculum revision activities and textbook evaluation and adoption procedures.

To determine the usefulness of the guidelines, projects must include several field tests. These field tests must determine: (1) The usefulness of the guidelines to publishers in the development of new materials and in the revision of existing materials; (2) the extent to which the guidelines help teachers analyze and prioritize content for students; and (3) the utility of the guidelines in improving school building or district-wide curriculum revision and textbook evaluation and adoption procedures. Part of the field testing must include obtaining informed judgments about the logic, design, and content of the guidelines from each of the target audiences above. For purposes (2) and (3), the projects must also include field tests in at least four school districts to test the usefulness of the guidelines as implemented in typical settings (classrooms and districts). The target populations for this priority are primary, elementary, and middle school aged students (kindergarten through grade eight) with handicapping conditions. It is anticipated that two cooperative agreements will be funded under this priority: one addressing social studies curricula and one addressing language arts curricula.

*Priority 5. Research on the Delivery of Services to Students With Handicaps From Non-Standard English, Limited English Proficiency (Including Mono-Lingual) and/or Non-Dominant Cultural Groups. (CFDA No. 84.023)*

The purpose of this priority is to support projects that focus on students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual), and/or non-dominant cultural groups. Projects supported under this priority must: (1) Use ethnographic and observational research techniques to identify the cultural and language features of classrooms and related service settings (e.g., speech or occupational therapy provided elsewhere on school grounds) that detrimentally affect the delivery of educational services to students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual), and/or non-dominant cultural groups by general education, special education, and related services personnel; (2) develop and test strategies, including personnel training strategies, for adapting the delivery of educational services to better accommodate the cultural and language patterns of these students; and (3) develop and test strategies for enhancing the development of the language, social, and survival skills necessary for functioning and learning in special and regular educational and community settings by students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual) and/or non-dominant cultural groups. Projects may select one or more target groups for the research but must make the selection through consideration of research evidence showing the need to address the particular groups.

*Priority 6. Interventions to Support Junior High School-Aged Students With Handicaps Who Are at Risk for Dropping Out of School. (CFDA No. 84.023)*

This priority supports research projects that focus on junior high school-aged students who are classified as seriously emotionally disturbed (SED) and students who are classified as

learning disabled (LD), and who are at risk for leaving school prior to completion. These projects must develop and field test interventions designed to enhance student's engagement in school. Each project must identify a target school district in light of relevant district and student characteristics including the percentage of nonhandicapped students and the percentage of students with handicaps, by handicapping condition, who exit schooling by dropping out. Information and hypotheses as to the reasons district students classified as SED and students classified as LD drop out of school must also be considered along with strategies for keeping these students in school. Hypotheses must be based on a conceptual framework that is drawn from previous special education and general education research regarding school drop-outs and drop-out prevention but tailored to the particular characteristics and circumstances of the target district and its students. This framework must identify school, home, and community factors that result in student engagement in schooling. Indicators of students engagement in schooling include attendance, participation in school and extra-curricular activities, completion of assignments, development of friendships, as well as commitment to school completion as measured by continuance in schooling during the entire project period. The interventions must address underlying problems rather than correct sysmptoms associated with students who drop out of school. For example, failing grades may be associated with students who drop out, but to simply give passing grades to students at risk for dropping out is not an acceptable intervention. Projects must develop, implement, and test comprehensive interventions related to these factors. School-based components of interventions must be implemented in general education settings, though they may be implemented in alternative school settings if these settings include nonhandicapped students. Projects must select at least two cohorts of students in successive years and follow them through at least two years of participation in the interventions through their transition to high school and at least to a chronological age that is 6 months past the minimum age for exiting from compulsory schooling as determined by State law or regulations. Research findings from the first cohort of students must be used to adjust (if necessary) the interventions used with the second cohort. In designing the field tests, investigators must concurrently or retrospectively collect information on comparison cohorts of similar students within the district to provide a longitudinal data base for measuring the effectiveness of the interventions. The final (fifth) year's activities must be limited to student follow-up and dissemination of project findings and materials, and thus will entail a reduced level of funding. Each project supported under this priority must include both SED and LD students at risk for dropping out of school.

*Priority 7. Initial Career Awards. (CFDA 84.023)*

This priority provides awards to eligible applicants for the support of individuals who have exited from graduate school programs no longer than three years prior to the award to conduct research and related activities focusing on the education of infants, toddlers, children, and youth with handicaps consistent with the purpose of the program as stated in 34 CFR 324.1. The support is intended to allow individuals in the initial phases of careers to initiate and develop promising lines of research that will improve the education of children with handicaps. The project must include a potential contribution to be derived from the proposed line of inquiry that will be pursued during the project period. The project must include a plan for obtaining sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts may be geographically located at other institutions. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. An applicant may apply for up to three years of funding. At least 50% of the researcher's time must be devoted exclusively to the project.

(Program Authority: 20 U.S.C. 1441–1444)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: March 8, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

[FR Doc. 89–7865 Filed 4–3–89; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

## Research in Education of the Handicapped Program; Inviting Applications for New Awards for Fiscal Year 1989

### Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program, and applicable regulations governing the program, including EDGAR, the notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The priorities for this program are published in a separate part of this issue of the **Federal Register.**

**Note:** The Department is not bound by any estimates in this notice.

### Purpose of Program

Under this program, the Secretary makes awards for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for infants, toddlers, children, and youth with handicaps; to conduct research, surveys, or demonstrations relating to the provision of services to infants, toddlers, children, and youth with handicaps; and research and related activities, surveys, or demonstrations related to physical education or recreation for children with handicaps.

### Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) the regulations for this program in 34 CFR Part 324.

RESEARCH PRIORITIES FOR FISCAL YEAR 1989

| Title and CFDA number | Deadline for transmittal of applications | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|
| Research on general education science or mathematics curricula (CFDA No. 84.023D1). | June 9, 1989 | $550,000 | $250,000–$350,000 | $275,000 | 2 | Up to 36. |
| Research on general education teacher planning and adaptation for students with handicaps (CFDA No. 84.023E1). | June 9, 1989 | $1,000,000 | $200,000–$300,000 | $250,000 | 4 | Up to 48. |

**Selection Criteria**

(a)(1) The Secretary uses the following selection criteria to evaluate applications for research projects. The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administation of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

*Cross Reference:* 34 CFR 75.590. Evaluation by the grantee.

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

**Eligible Applicants**

Under this program, the Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633.

Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

*Notes:* (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Forms and Instructions**

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

*Part II:* Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

*Part III:* Application Narrative.

*Part IV:* Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewall, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3522), Washington, DC 20202. Telephone: Linda Glidewell (202) 732–1099.

**Program Authority:** 20 U.S.C. 1441–1444.

**Dated:** March 29, 1989.

**Patricia McGill Smith,**

*Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.*

**Appendix**

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only AN ORIGINAL AND TWO COPIES need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required nor does it guarantee the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. Is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualification of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard Form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC, in the travel budget. Travel to conference is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives a high score from the reviewer does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

## APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):** ☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ ▪ ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|
| 23. Remarks | |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.)** (continued)

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** – Show the amount of indirect cost.

**Line 6k** – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.

**Instructions for Part III—Application Narrative**

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities published elsewhere in this **Federal Register**, the selection criteria the Secretary uses to evaluate applications, and the appendix to the program regulations which provides guidelines for preparing applications for research projects.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only).

*Research in Education of the Handicapped* (84.023)

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0028, Washington, DC 20503.

BILLING CODE 4000-01-M

OMB Approved No. 0348-0042

## ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statues relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination of the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-333) regarding labor standards for federally assisted construction subagreements.

14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

## Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

## Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## Certification Regarding
## Debarment, Suspension, Ineligibility and Voluntary Exclusion
## Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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## Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

**The grantee certifies that it will provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name _____ PR/Award Number or Project Name _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

ED 80-0004

[FR Doc. 89-7866 Filed 4-3-89; 8:45 am]

federal register

Tuesday
April 4, 1989

Part III

# Environmental Protection Agency

**Asbestos: Notice of Public Meeting and Denial of Citizens' Petition; Notices**

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62075; FRL-3549-8]

### Asbestos; Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** EPA will hold a public meeting as part of its effort to gather data and hear arguments which will assist EPA in assessing what future activity is necessary to deal with asbestos in public and commercial buildings. If necessary, EPA will hold subsequent public meetings to ensure that all key issues are discussed thoroughly and that all affected groups have an opportunity to convey their opinions.

**DATES:** The meeting will be scheduled for early May 1989. The exact date and time of the meeting can be obtained by calling the TSCA Hotline at (202) 554–1404 after Wednesday, April 12, 1989.

**ADDRESS:** The meeting will be held in the Washington, DC area. The exact location of the meeting can also be obtained by calling the TSCA Hotline at (202) 554–1404 after Wednesday, April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 201(b)(3) of the Asbestos Hazard Emergency Response Act (AHERA) required EPA to conduct a study to determine "the extent of danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger." In February 1988, EPA responded to that statutory mandate by publishing its study findings in a Report to Congress.

EPA's Report to Congress examined a variety of asbestos control options which go beyond present Agency actions. However, the EPA Administrator, in a letter transmitting the Report, concluded that greater Federal regulation of asbestos in public and commercial buildings was not the most responsible approach for EPA to take at this time. The Administrator reached that decision for three reasons. First, the current infrastructure of accredited personnel and enforcement staff is inadequate to handle the inspection and abatement actions that could be stimulated by a new regulatory inspection or abatement program for public and commercial buildings. Second, the nation's primary focus needs to remain on schools, because children, who are the primary occupants of school buildings, may be particularly vulnerable to asbestos exposure and because any significant additional demand on the national infrastructure imposed by new and immediate regulation could undermine the successful completion of the school asbestos program. Finally, there is inadequate information about asbestos exposure and its control in public and commercial buildings to determine the appropriate scope and scale of a new regulatory program on asbestos.

Although the Administrator concluded, for the reasons stated above, that it would be unwise and inappropriate to initiate rulemaking at this time, the Administrator recommended four steps be taken for assessing and improving the quality of asbestos-related actions currently taking place in public and commercial buildings. These steps, to be carried out over a 3-year period, were to enhance the nation's technical capability, focus attention on thermal system insulation asbestos, improve enforcement activities directed at prevention of imminent hazards, and objectively assess the effectiveness of the AHERA Schools Rule and obtain additional information essential to future decisionmaking.

EPA believes that meeting with all groups which have an interest in the issue of asbestos in public and commercial buildings is important for the Agency to carry out successfully the steps recommended in the Report to Congress. EPA believes these groups can help prepare the Agency for any appropriate future programmatic and regulatory decisions on asbestos by sharing their views and insights on the current status of the nation's technical capability, the significance of new exposure and efficacy information, the applicability of the AHERA schools process for non-school buildings, and the merits of various regulatory strategies. For these reasons, EPA has scheduled the public meeting identified in this notice, and is prepared to schedule additional meetings if they are necessary to ensure that all key issues are discussed thoroughly and that all affected groups have an opportunity to convey their opinions.

#### II. Key Issues for Discussion

EPA anticipates that the following will be among the key issues for discussion at the public meeting:

1. What is the nature and scope of exposure to asbestos in public and commercial buildings, given the current regulations in place and the effectiveness of their enforcement?

2. Is the infrastructure of accredited personnel and enforcement staff developing adequately to handle a major, new program of asbestos control for public and commercial buildings? If not, under what circumstances and when could we expect this infrastructure to be in place?

3. How can EPA best fill some of the significant gaps in its information base on asbestos exposure in public and commercial buildings?

4. What further Federal actions are appropriate either now or in the future? What are the societal burdens associated with such actions and what benefits to society could be anticipated?

#### III. Participants

All interested individuals and groups are invited to attend and to participate in the public meeting. EPA has identified certain groups whose interests should be represented. These groups include building owners and managers, service workers, real estate interests, mortgage bankers, asbestos management and control professionals, and former and present manufacturers of asbestos-containing materials.

#### IV. Additional Meetings

Additional meetings may be necessary to ensure that all key issues are discussed thoroughly and that all affected parties have an opportunity to convey their concerns. Such meetings will be open to the public. Persons wishing to be given notice by mail of future meetings may contact the TSCA Assistance Office at the address and telephone number given above under **"FOR FURTHER INFORMATION CONTACT."**

Dated: March 29, 1989.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 89–7933 Filed 4–3–89; 8:45 am]

BILLING CODE 6560–50–M

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[OPTS–211023; FRL–3524–2]

### Asbestos; Denial of Citizens' Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of citizens' petition.

**SUMMARY:** On November 8, 1988, the Service Employees International Union

(SEIU) petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, to initiate a rulemaking proceeding, under section 6 of TSCA, 15 U.S.C. 2605, concerning friable asbestos-containing materials in non-school public and commercial buildings. This notice announces EPA's denial of SEIU's petition.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 8, 1988, SEIU petitioned EPA, under section 21 of TSCA, to initiate a proceeding to issue a rule to control friable asbestos-containing materials (ACM) in public and commercial buildings other than schools. Specifically, SEIU requests that EPA initiate a rulemaking, under TSCA section 6, to:

1. Require adequate inspection for, and identification of ACM and communication of this knowledge to those at risk (petition pages 3 and 14).
2. Establish procedures to be followed where actual or potential hazard is present (petition pages 3 and 14).
3. Establish rules to ensure that the most beneficial and least harmful actions are taken during the time that EPA considers it necessary to develop the national infrastructure to manage asbestos problems (petition pages 3 and 10 through 13).

The petition also requests action on asbestos in school buildings to the extent that they are not covered by EPA rules. However, the petition does not discuss any gaps SEIU perceives in EPA's school rules, nor does the petition set forth any facts which SEIU claims establish that it is necessary to issue a rule affecting schools. Accordingly, EPA does not regard the petition as applying to schools.

This is the second TSCA section 21 petition filed by SEIU requesting Federal regulation of asbestos in buildings. In November 1983, SEIU filed its first petition, which requested EPA to issue rules affecting asbestos in schools and in public and commercial buildings and to issue rules to protect employees performing abatement activities. EPA responded to the first petition by issuing notices in the Federal Register on March 7, 1984 (49 FR 8450), and June 14, 1984 (49 FR 24552).

In response to SEIU's first petition, EPA issued final rules to protect certain State and local government employees engaged in asbestos abatement. *See* 40 CFR Part 763, Subpart G. With respect to the other rules requested in the petition, EPA stated that it granted the petition, initiated a proceeding by holding hearings to decide on its next course of action, and ultimately decided not to proceed to a proposed rule. SEIU filed suit against EPA in the United States District Court for the District of Columbia to compel EPA to propose these other rules.

After several years of litigation, the court, in *SEIU* v. *Thomas*, No. 84–2790 (D.D.C.) (Memorandum Opinion, October 24, 1986), ordered EPA to propose rules requested by SEIU under TSCA section 6 for schools and other buildings. The court reasoned that EPA was obligated to propose rules under TSCA section 6 because EPA had originally stated that it granted SEIU's petition. The court did not reach the issue of whether Federal rules were needed to protect against asbestos risk in buildings. At approximately the same time as the court issued its order, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) of 1986, which required EPA to issue rules for the inspection and management of asbestos in schools and required EPA to submit a study to Congress which would assess the risks of asbestos in other public and commercial buildings and recommend whether rules were appropriate for those buildings.

AHERA created some inconsistencies with the court order. While EPA was able to comply with the court's order affecting schools by meeting the AHERA mandate, AHERA created a conflict with the court's order as it applied to non-school public and commercial buildings. The order required proposed rules; AHERA only mandated a study. In deference to Congress, on July 17, 1987, the court vacated its order regarding the other buildings.

EPA complied with both AHERA and the District Court order by promulgating rules affecting asbestos in schools. *See* 52 FR 41826 (October 30, 1987). EPA successfully defended these rules against a challenge in the United States Court of Appeals for the District of Columbia Circuit. *See Safe Buildings Alliance* v. *EPA* 846 F.2d 79 (D.C. Cir. 1988). The Supreme Court declined to review the Court of Appeals decision.

In February 1988, EPA submitted to Congress its study on public and commercial buildings. SEIU, thereupon, petitioned the District Court to clarify or reconsider its June 1987 order vacating the requirement for EPA to propose rules on public and commercial buildings. Before the court could hear the parties on this motion, EPA and SEIU settled the District Court litigation with regard to public and commercial buildings. The U.S. Government paid SEIU approximately $220,000 in attorneys' fees, and SEIU agreed that EPA no longer had any obligations with regard to the first SEIU petition. EPA also agreed to consider, in accordance with TSCA section 21, any further SEIU petitions on asbestos in public and commercial buildings.

## II. EPA Asbestos Activities

EPA has undertaken a variety of technical and financial assistance programs and regulatory activities designed to control ACM in buildings and minimize inhalation of asbestos fibers. This Unit discusses those actions taken to date by EPA.

### *A. Technical and Financial Assistance Programs*

Since 1979, EPA staff have assisted schools and other building owners in identifying and controlling ACM in their buildings. EPA employs nearly 50 technical assistants, hired through a special environmental program with the American Association of Retired Persons (AARP), to counsel building owners. With the help of these technical assistants, many school officials and building owners have effectively and safely dealt with their asbestos problems.

In addition, EPA has published state-of-the-art guidance to help identify and control asbestos in buildings. EPA's principal asbestos guidance document, *Guidance for Controlling Asbestos-Containing Materials in Buildings* (EPA 560/5–85–024, also known as the Purple Book), was expanded and updated in June 1985, based on recommendations from recognized national experts. The document provides criteria for building owners to use in deciding which abatement method is most appropriate for each situation.

An important EPA goal has been to provide training for people involved in all aspects of the identification and control of asbestos. During 1985 and 1986, EPA established five Asbestos Information and Training Centers to provide information concerning the identification and abatement of asbestos hazards and to train people in proper asbestos abatement techniques. The five centers are located at the Georgia Institute of Technology in Atlanta, the University of Kansas in Kansas City, Tufts University in Medford, Massachusetts, the University of Illinois in Chicago, and the University of California at Berkeley. In addition, EPA established four satellite training

centers in 1986 and 1987 to help keep pace with the growing demand for training resulting from the enactment of AHERA. These centers are located at the University of Utah in Salt Lake City, the University of Texas at Arlington, Rutgers Medical School in Piscataway, New Jersey, and Drexel University in Philadelphia.

These centers, alone, are not able to supply the nation's schools with the very large number of trained and accredited asbestos personnel required to implement AHERA. To help increase the number of individuals qualified to perform asbestos work in schools, EPA has developed a program for reviewing and approving individual training courses taught across the nation. As of December 22, 1988, EPA had approved a total of 310 training providers for 660 individual training courses.

Abatement decisions need to be made locally, because the large number of asbestos abatement projects and the short-term nature of many of them preclude extensive Federal involvement. EPA, therefore, believes that contractors should be State-certified and that States should oversee projects to ensure that they are properly performed. To that end, EPA has provided States with model legislation to help them develop contractor certification programs. EPA has also awarded a total of $2.5 million in grants to 39 States for the purpose of establishing contractor certification programs. Finally, in 1988 EPA distributed slightly more than $1 million in grants to 17 States to help them develop inspector accreditation programs.

In addition to the wide variety of technical assistance programs, EPA has also provided financial assistance to public school districts and private schools for the purpose of controlling ACM in their school buildings. The Asbestos School Hazard Abatement Act (ASHAA) authorized EPA to award grants and loans to local education agencies (LEAs) which have serious asbestos problems and which have a demonstrated financial need. These funds are limited to only those abatement projects necessary to reduce the risk of harmful asbestos exposure for school children and/or school employees. Since 1985, EPA has awarded over $150 million to deserving LEAs for nearly 1,800 individual abatement projects. Also, since October 1987, EPA has provided $20 million to 28 States, 2 territories, and the Bureau of Indian Affairs to help schools in these areas conduct the asbestos inspections and develop the asbestos management plans mandated by AHERA.

*B. Regulatory Program*

EPA's asbestos regulatory program began in 1973 when EPA issued the National Emission Standard for Hazardous Air Pollutants (NESHAP): Asbestos Regulations (40 CFR Part 61). The NESHAP for asbestos applies to building renovation and demolition involving friable ACM. The building owner or operator must provide to EPA written notice of intention to renovate or demolish and follow basic asbestos emission control procedures. Transport and disposal practices prohibit visible emissions into the air. The NESHAP for asbestos is currently being amended to enhance enforcement and to promote compliance with the existing standard.

In 1982, EPA issued an asbestos identification and notification rule for schools (47 FR 23360). This rule required school officials to inspect all school buildings for friable materials, take a minimum of three samples of each type of friable material found, analyze samples using polarized light microscopy (PLM) to determine if asbestos is present, and keep records of the findings. School officials who found friable ACM were required to notify employees of the location of the materials, post a notification form in the primary administrative and custodial offices and faculty common rooms, provide maintenance and custodial employees with a guide for reducing asbestos exposure, and notify parent-teacher associations or parents directly of the inspection results.

In 1986, after extensive consultation, comment, and public hearings, the Occupational Safety and Health Administration (OSHA) promulgated rules which establish standards for occupational exposure to asbestos. OSHA's construction standard (29 CFR Part 1926.58) and general industry standard (29 CFR Part 1910.1001) set a permissible exposure limit for all private sector workers. These standards also provide for exposure monitoring, medical surveillance, and hazard communication to employees.

Following OSHA's lead in worker protection and responding to SEIU's first petition, EPA issued a worker protection rule (40 CFR Part 763, Subpart G) in 1986 which essentially extended the provisions of the OSHA construction standard to public sector employees in those States not covered by the current OSHA standards. The EPA rule also includes a provision not in the OSHA rules, i.e., EPA must be notified 10 days before an asbestos abatement project is begun when public sector employees are doing the work. The Agency is committed to modifying its worker protection rule to remain consistent with any OSHA revisions. In particular, EPA is now in the process of extending its regulations covering public sector employees to include those service workers not already covered under the OSHA rules.

In October 1987, EPA issued a comprehensive rule, as mandated by AHERA, for managing and abating ACM in schools. This rule, known as the AHERA schools rule, requires all LEAs to identify ACM in their school buildings and to take appropriate actions to control the release of asbestos fibers. LEAs are required to describe their activities in management plans, which must be made available to all concerned persons and submitted to State Governors. The rule also requires LEAs to use specially-trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos.

In January 1986, EPA proposed a rule to prohibit, over a 10-year period, the manufacture, importation, and processing of asbestos products. Since the 1986 proposal, EPA has evaluated public comments, held public hearings, updated much of its hazard, exposure, and economic analyses, and is now in the concluding stages of issuing a final rule.

*C. Recent Developments*

In addition to establishing a comprehensive regulatory framework for controlling asbestos in schools, AHERA also required EPA to conduct a study to determine "the extent of danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger" (AHERA, section 201(b)(3)). In February 1988, EPA responded to that statutory mandate by publishing its study findings in a report to Congress.

The EPA study consisted of a number of activities including a review and reanalysis of data previously collected by EPA during its 1984 national building survey, a review of information on asbestos in buildings available from sources outside EPA, and a description of new data collection efforts initiated by EPA during 1987. The activities in 1987 included a series of workshops with panelists consisting of building owners, managers and investors, abatement contractors, State and local officials, and Federal building managers involved in asbestos management and a study of airborne asbestos levels in Federal buildings.

The February 1988 Report to Congress found that approximately 733,000 or 20

percent of the 3.6 million public and commercial buildings in the 1984 EPA survey contain friable asbestos. An estimated 501,000 or 14 percent of the total buildings contain some damaged ACM. About 317,000 or 9 percent of all buildings have at least some significantly damaged ACM. The Report points out that significantly damaged material is commonly thermal system insulation, often found in nonpublic building areas, such as boiler and machinery rooms.

The Report states that estimates of absolute risk associated with exposure to asbestos in public and commercial buildings are subject to great uncertainty due to limited exposure data in these buildings. EPA, however, has developed a proportional risk model which suggests that the elimination of asbestos exposures in schools might significantly reduce residual risk for populations later exposed in public and commercial buildings, assuming equal or higher exposures in schools. Even though the elimination of asbestos exposures in schools may significantly reduce risk, there may be significant residual risk resulting from exposure in public and commercial buildings. Service workers, for example, may encounter higher episodic exposures, if existing OSHA and EPA worker protection standards are violated.

To try to determine the most appropriate course of action, the Report examined six major scenarios which go beyond present EPA activity. For each scenario, EPA analyzed the feasibility, risk reduction, and costs of implementation. The scenarios ranged from enhancement of current technical assistance programs without imposing additional Federal regulations, through development of programs using Federal buildings as a management model, to promulgation of various levels of Federal regulation. Regulatory considerations ranged from inspection rules only, through regulations targeted to specific activities beyond inspection (e.g., operations and maintenance), through sequential regulations that gradually expand the coverage of building types, to a comprehensive regulatory program as currently established for schools. EPA specifically refers readers to pages 24 through 35 of the Report to Congress and applicable appendices and references for a more detailed discussion of the scenarios.

After considering the various options for additional EPA action, the EPA Administrator, in a letter transmitting the Report to Congress, concluded that greater Federal regulation of asbestos in public and commercial buildings was not the most responsible approach for the Agency to take at this time. The Administrator reached that decision for the following reasons:

1. *Inadequate infrastructure.* EPA believes that a new regulatory inspection or abatement program for public and commercial buildings could stimulate more inspection and abatement actions than the current infrastructure of accredited personnel and enforcement staff can handle. As a result, abatement may be performed improperly, which, in turn would likely increase rather than reduce risk. The Administrator stated on page 5 of his transmittal letter that "until the necessary infrastructure to manage asbestos problems on a much larger scale exists, I fear a major initiative in other buildings could do more harm than good."

2. *Primary focus on schools.* Although asbestos in commercial buildings represents a potential health hazard that deserves careful attention, EPA believes that the nation's primary focus needs to remain on asbestos in schools. That priority is merited, because children, who are the primary occupants of school buildings, may be particularly vulnerable to asbestos exposure. First, data suggest that asbestos material appears to be more common and more likely to be disturbed in schools than other buildings. Second, the student population is clearly subject to the 20- to 40-year latency period before an asbestos-related disease usually manifests itself.

In addition to the special concerns about children, EPA must be very careful now not to take steps which might undermine the successful completion of the school asbestos program. During the next few years, AHERA school rule activities will stretch the resources of this country, in terms of trained and accredited inspectors, contractors, laboratories, as well as compliance assistance and enforcement capabilities among the various levels of government. In fact, Congress recently extended the AHERA deadline for some schools, due, in large part, to the perceived inadequacy of the infrastructure of accredited inspectors and laboratories to meet school needs. Although EPA expects the supply of accredited professionals and laboratories to expand in response to demand for increased services, any significant additional demand imposed by law and immediate regulation could pose a serious obstacle to the success of the AHERA schools program.

3. *Inadequate information.* At present, there are significant gaps in our base of information about asbestos exposure in public and commercial buildings. Estimates of the number of persons exposed, prevailing fiber levels, and the frequency and effect of episodic events are highly uncertain. As a result, the Administrator stated on page 4 of the transmittal letter that "it would be foolish for the country to consider a large new program of asbestos control without first asking basic questions which could improve our response to asbestos in public and commercial buildings and probably provide public health protection at a lower cost."

Although the Administrator concluded, for the reasons discussed above, that it would be unwise and inappropriate to initiate rulemaking at this time, he also stated in his letter that "this should not be interpreted as ruling out an inspection rule or even greater Federal regulation of these public and commercial buildings at some later time." The Administrator closed the letter by adding that "we should address (the question of rulemaking) in about 3 years after we have had more experience with the AHERA school rule, have dealt with the large surge of demand for trained professionals, and have completed the important studies I have outlined above."

Finally, the Administrator made four recommendations for assessing and improving the quality of asbestos-related actions currently taking place in public and commercial buildings. These recommendations were to be carried out over a 3-year period. The recommendations and the actions EPA has taken to date to implement these recommendations are discussed below:

1. *Enhance the nation's technical capability.* The Report identifies two major categories of activities to enhance the nation's technical capabilities. First, EPA, should increase the number of asbestos professionals accredited to perform management and abatement tasks in public buildings. Second, EPA must help building owners better select and apply appropriate asbestos control and abatement actions in their buildings. It is important to point out that, while EPA has helped build up the national infrastructure to accommodate the increased level of asbestos activity mandated by AHERA for the nation's 100,000 schools, a much larger infrastructure would be required to provide a similar level of activity in the nation's more than 3.6 million public and commercial buildings.

EPA estimates that, as of October 1988, EPA-approved courses had trained some 21,000 individuals to become accredited inspectors and management

planners under AHERA. However, even this number of accredited personnel may not be adequate to handle the nation's 100,000 schools. Anecdotal information suggests that, in several sparsely populated States at least, the available supply of trained asbestos professionals could not meet the demand for services in schools within the original AHERA time frame.

In addition, it is not a simple matter to extrapolate from the number of accredited personnel needed for schools to those needed for public and commercial buildings. EPA estimates that about 30 percent of inspector/management planner courses are filled by school district personnel, not private contractors. While school officials may conduct inspections and draw up management plans in their local schools, they are unlikely to perform asbestos work in other public and commercial buildings. Moreover, a number of EPA training centers report that each accreditation training course includes Federal, State, and local government officials, attorneys, and others who are unlikely to conduct asbestos inspections and other asbestos-related activities in public and commercial buildings.

Finally, the universe of public and commercial buildings is quite heterogeneous. Compared to the homogenous nature of the universe of school buildings, power plants, skyscrapers, hospitals, factories, etc., all present unique characteristics that greatly increase the difficulty of conducting asbestos-related activities. Given the great variety in size, function, and design of public and commercial buildings, it is very difficult to approximate how many of these buildings a trained professional can inspect or develop management plans for during a specified period of time. Consequently, EPA cannot determine, at this time, the size of the infrastructure which would be necessary for the more than 3.6 million public and commercial buildings; but it is clearly much larger than the current infrastructure.

The following are activities EPA has recently started or completed to enhance the nation's technical capability and increase the size of the infrastructure for asbestos management and control:

a. Asbestos training. In July 1988, EPA made available final model course materials for inspection and management planning training. In December 1988, EPA also made available a revised course for asbestos abatement contractors and supervisors. EPA makes these course materials available to training providers to help ensure consistent instructional quality.

As of December 22, 1988, EPA had approved a total of 310 training providers for 660 individual training courses taught across the nation. This total includes 236 asbestos abatement worker courses, 159 contractor/supervisor courses, 118 inspector/management planner courses, 7 inspector only courses, and 12 project designer courses.

b. State accreditation programs. AHERA mandates that each State adopt a contractor accreditation plan at least as stringent as EPA's model plan within 180 days following the commencement of the State legislature's first regular session after April 30, 1987. As of January 1, 1989, three States had received full EPA approval of their accreditation programs for all asbestos contractor disciplines (i.e., workers, supervisors, inspector/management planners, and project designers). Nine other States had received EPA approval for part of their accreditation program. The remaining States do not have EPA-approved accreditation programs.

The National Conference of State Legislatures (NCSL), through a cooperative agreement with EPA, has developed model legislation that addresses all the major components of a comprehensive AHERA-grade accreditation program. All State legislatures have received this model legislation to assist in developing an accreditation plan for all asbestos management and abatement personnel. NCSL also provides technical assistance to individual States on accreditation issues.

c. National data base of AHERA accreditation. The National Asbestos Council, under a cooperative agreement with EPA, is developing a listing of all individuals accredited to perform asbestos-related inspection, management planning, and abatement activities under AHERA. This national data base is scheduled to be operational in 1989.

d. AHERA-accredited laboratories. EPA has provided funds over the past 2 years to support the development of a laboratory accreditation program for asbestos analysis at the National Institute of Standards and Technology, formerly called the National Bureau of Standards. The bulk analysis component of this program should be fully operational in April 1989. The second half of the program, air sampling analysis, should be in place by April 1990. In the meantime, EPA has established the Interim Asbestos Bulk Sample Quality Assurance Program, under which some 700 laboratories are currently approved for analysis of suspect materials.

e. Operations and maintenance guidance and training for asbestos. EPA has resumed the development of an operations and maintenance (O&M) guidance manual for public and commercial building owners. Publication of the new O&M manual is scheduled for 1989.

Model O&M course curriculum and materials are also being developed through an EPA cooperative agreement with the University of Minnesota for training custodial and maintenance personnel who work in schools and public and commercial buildings. These O&M course materials should be complete in 1989, when they will be made available at cost to training organizations, schools, and other interested groups.

f. GSA/EPA asbestos management program. Following a longstanding cooperative effort, EPA has launched a new public building management program with the General Services Administration (GSA). The featured component of the GSA/EPA asbestos program is the development of a Federal building manager's "kit," which would include guidance, model forms, and reports for the comprehensive management of ACM in Federal buildings. It would also serve as a useful tool for other public and commercial building managers. The "kit" is scheduled for completion in the summer of 1989. The joint program will also provide for specialized management training, a GSA asbestos managers' information network, and an ongoing GSA/EPA exchange on asbestos issues and abatement technology.

g. Commercial buildings case study. EPA has reinstated its case study of responsible corporate asbestos management with a major national corporation. This project will demonstrate how an asbestos management program in a corporate setting is properly initiated and conducted. EPA expects to complete the study by mid-1989.

2. *Focus attention on thermal system insulation (TSI) asbestos.* The Report indicates that TSI asbestos is more common, more likely to be damaged and of a higher asbestos content than other forms of ACM. In addition, TSI is generally easy to repair and abate, and thus amenable to quick, safe remediation. As a result, EPA has recommended specific activities to develop and provide proper guidance through a new TSI assistance program:

a. Information on TSI asbestos in public buildings. EPA has consolidated its current knowledge about the presence of TSI asbestos in the Nation's

public and commercial buildings through a reanalysis of data collected during EPA's 1984 survey of public and commercial buildings. This information will provide a better basis for establishing EPA's TSI assistance program.

b. New TSI guidance and model course materials. EPA intends to develop new guidance and instructional materials on TSI repair and abatement techniques. EPA will be working with asbestos training programs to improve the quality of TSI training materials and to increase training opportunities.

3. *Improved integration of activities to reduce imminent hazards.* The Report acknowledges that more should be done to avoid high peak exposures associated with improper or poorly timed asbestos removal activities. Steps should be taken to improve coordination among EPA and other Federal, State, and local asbestos control organizations and to increase EPA's capability of enforcing existing asbestos regulations.

a. Revised asbestos NESHAP strategy. On January 10, 1989, EPA issued a proposed rule in the **Federal Register** to revise the asbestos NESHAP. This proposed rule revises the current standard by enhancing enforcement and promoting compliance without altering the stringency of existing controls.

b. NESHAP/TSCA coordination project. EPA initiated a pilot TSCA/NESHAP coordination project in its Region VII area in 1986 to better integrate NESHAP compliance inspection activities with TSCA technical assistance. EPA has directed all of its regional offices to establish formal practices for NESHAP/TSCA coordination by FY 1990.

c. Federal Asbestos Task Force. EPA has sponsored the Federal Asbestos Task Force, a working group of officials from Federal agencies with asbestos program responsibilities. Over the next 2 years, EPA expects to develop information systems which allow these Federal agencies to share information about asbestos.

4. *Objectively assess the effectiveness of the AHERA Schools Rule and other current activities.* The Report commits EPA to determine whether the AHERA schools rule approach is working in schools and whether it is appropriate for public and commercial buildings. Further, the Report identifies several "data gaps" which limit EPA's ability to assess options, draw conclusions, and make recommendations about asbestos in nonschool buildings. EPA is committed to filling these "gaps," to the extent possible and practicable, through ongoing Agency research and a special research initiative with the private sector:

a. AHERA evaluation. EPA has established the AHERA Evaluation Project to collect data about how well the asbestos control process is working in schools. It will also help provide EPA with information it needs to determine what components of the AHERA schools rule might be applicable for public and commercial buildings.

To this end, several individual studies have been identified. A final report on the entire AHERA evaluation project is planned in 1991, when all studies are scheduled for completion.

b. Exposed population study. EPA has initiated a study to determine, among other things, the number, sex, and age distribution of people exposed to asbestos in public buildings. This information will increase EPA's ability to calculate potential risk.

c. EPA's ongoing research program. EPA has initiated a new research study to help identify appropriate engineering control technologies for asbestos control and abatement in occupied spaces and tall buildings.

Other research projects include a program to standardize air sampling of asbestos, using transmission electron microscopy (TEM); a program to test the efficacy of glovebags for TSI removal; and a study to determine the effectiveness of wet vacuuming to control the release of asbestos fibers.

d. Health Effects Institute (HEI) research. In EPA's fiscal year 1989 appropriation, Congress provided $2 million for asbestos research that would help fill in the informational gaps identified in EPA's February 1988 Report to Congress. Congress stipulated that these funds be matched by private contributions. Congress also specified that the research be conducted under the auspices of the Health Effects Institute (HEI) to assure the quality and objectivity of the research.

The HEI research, as specified by Congress, should help provide EPA with answers to questions about prevalent airborne asbestos levels in buildings, prevalent exposure levels of particular groups (e.g., service workers), the contribution of "peak" asbestos fiber releases to total exposure, and fiber levels following removal and O&M activities. The answers to these questions should greatly aid in the design of an effective and efficient response to the presence of asbestos in public and commercial buildings and could reduce the cost of dealing with the problem by billions of dollars.

**III. Statutory Requirements**

Section 21 of TSCA provides in part that any person may petition EPA to initiate a proceeding for the issuance of a rule under section 6. The petition must set forth the facts which it is claimed establish the need for the rule. EPA is required to grant or deny the petition within 90 days after filing. If EPA grants the petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, EPA must issue its reasons in the **Federal Register**. Within 60 days of denial, or if EPA fails to grant or deny the petition within 90 days, within 60 days of the expiration of the 90-day period, the petitioner may commence a civil action in a U.S. District Court. In the case of a petition to issue a rule under section 6, the court is required to order EPA to initiate the action requested by the petitioner if the petitioner shows to the satisfaction of the court by a preponderance of the evidence that "there is a reasonable basis to conclude that the issuance of such a rule * * * is necessary to protect health or the environment against an unreasonable risk of injury. * * *"

In reviewing the SEIU petition, EPA assessed whether the rules requested by SEIU are necessary to protect against an unreasonable risk of injury to human health. This is the same test as the court would apply under section 21. The test has two aspects. Rules must be "necessary" and there must be an "unreasonable risk" against which the rules will protect.

EPA interprets the standard that rules are "necessary" to require consideration of whether TSCA rules are the appropriate remedy to protect against the risk described. For example, regulations under other Federal statutes, administered by EPA or other agencies, may be more appropriate than TSCA rules. Another consideration may be whether State or local initiatives constitute the appropriate remedy instead of Federal rules.

To determine "unreasonable risk," EPA believes it is appropriate to use the criteria of TSCA section 6, since SEIU is requesting rules under that section. The finding of unreasonable risk under TSCA section 6 is an administrative judgment under which EPA determines that the reduction of health or environmental risk resulting from a potential regulation outweighs the regulatory burden to society. Determining whether a risk is unreasonable under section 6 involves balancing the probability that harm may occur from a chemical substance or

mixture and the magnitude and severity of that harm, against the effect on society, including economic effects, of placing regulatory restrictions on that chemical. Specifically, TSCA section 6(c) requires that the following be considered:

1. The effects of the chemical of concern on human health and the environment.
2. The magnitude of exposure of the chemical to humans and the environment.
3. The benefits of the chemical for various uses and the availability of substitutes for such uses.
4. The economic consequences of the rule after considering the effect upon the national economy, small business, technological innovation, the environment, and public health.

In summary, to decide whether a chemical presents an unreasonable risk, EPA must determine the risk by considering evidence on chemical toxicity and exposure, and then weigh that evidence against the projected burdens and any countervailing risk of regulation. If EPA decides that the risks outweigh the burdens, the risks are unreasonable.

An unreasonable risk finding requires more than a determination by EPA that a chemical has toxic properties and that numbers of persons are exposed to that chemical. Rather, EPA must examine the reduction in risk that will result from taking various alternative actions and the societal burdens that will be incurred from each of those alternatives. For example, if contaminant levels are low and extremely high burdens would be incurred to achieve small incremental risk reduction, the Agency might not find the risk unreasonable. On the other hand, an unreasonable risk may be found if moderately high levels may be reduced to acceptable levels at a low burden.

Furthermore, the greater the societal burden of regulation, the better the evidence of risk must be to impose that burden. This concept is discussed in the legislative history of TSCA. The House Report notes that risk is measured by elements of probability of harm and severity of harm that may vary in relation to each other and that the regulatory effect will be of greater significance in making an unreasonable risk determination if greater restrictions are imposed by regulation (H.R. Rep. 94–1341, 94th Cong., 2d Sess., pages 14 and 15). Thus, for example, in order to impose regulations banning a chemical substance and thereby imposing a significant burden on society, EPA would need considerable information on toxicity and exposure. On the other hand, the Agency would need less information on risk if it were to impose only a testing requirement that would not, by itself, result in the loss of benefits of the chemical to society.

Finally, if governmental action under section 6 would itself create additional risk, either directly or indirectly, by shifting the risk to another location or pathway or population, these risks must be considered as decreasing the total risk reduction achieved by governmental action. This consideration is especially relevant in the present case.

EPA evaluates the SEIU petition in the next unit in light of these criteria and the weight of the evidence presented.

## IV. Evaluation of the Petition

### *A. Summary of Petition*

SEIU's petition, first, briefly summarizes the history of litigation and legislation involving ACM in schools and other buildings (petition pages 1 through 4) and, then, makes the following claims which, SEIU asserts, establish the need for a rule (petition pages 4 through 13). EPA has determined that asbestos is a toxic chemical (petition page 5). In addition, EPA does not know which of the approximately 3.6 million public and commercial buildings in the United States contain asbestos, although EPA estimates that approximately 20 percent do (petition page 6). Many of the buildings containing asbestos have some damaged material (petition page 6). Many of the very large numbers of people occupying these buildings do not know of the presence of asbestos in the buildings (petition pages 2 and 4). Peak levels of asbestos during serious disturbances can be very high and could cause serious risk to individuals (petition pages 4, 6, and 7). EPA's guidance urges building owners and operators to take voluntary action, but also acknowledges that not all action taken is competent and that action improperly taken could increase risk (petition pages 2 and 13).

SEIU uses these claims to support its argument that uniform, Federal rules constitute the necessary response to remedy the risks from asbestos in public and commercial buildings. SEIU makes three basic arguments. First, the widespread risk from asbestos in buildings is beyond dispute. In support of this argument, SEIU cites various EPA pronouncements which state that asbestos has toxic properties, is present in a large number of buildings, and in some cases, may lead to peak exposure levels if improperly treated.

Second, EPA has effectively made the unreasonable risk findings to mandate rulemaking. SEIU bases this argument on the following logic. EPA found in support of its 1982 school inspection rule that inspections for asbestos in schools were necessary to protect against unreasonable risk. EPA also determined in its February 1988 Report to Congress that service workers are equally at risk whether employed in schools or in public or commercial buildings. Also, EPA, by its guidance, counsels building owners and operators to take action voluntarily and, thus, cannot argue that protective actions are too costly. According to SEIU, these arguments necessarily lead to the determination that asbestos in public and commercial buildings presents an unreasonable risk, at least for service workers.

Finally, SEIU argues that by counseling building owners through guidance to take voluntary action without controlling and/or limiting that action by rulemaking, EPA may exacerbate the problem of asbestos in schools. SEIU argues that this voluntary program is nothing more than a repetition of a discredited policy that building owners follow Agency guidance (petition pages 9 and 10). In support of this argument, the petition generally incorporates by reference documents that SEIU claims show EPA's "internal conclusions that, in the absence of regulations, building owners/operators were too frequently either not taking action, or taking action that was counterproductive" (petition page 12, footnote 18). While SEIU does not cite any specific documents, it apparently refers to various documents obtained in its earlier litigation against the Agency and subsequently presented to Congress during various hearings on asbestos in buildings (petition pages 1, 2, and 12, footnote 18).

### *B. Evaluation of SEIU'S Petition*

As a preliminary matter, EPA notes that it does not entirely agree with SEIU's characterizations of earlier asbestos in buildings litigation or legislative deliberations, particularly deliberations affecting public and commercial buildings. For the most part, it is not necessary for EPA to respond to characterizations of the litigation in this notice because litigation disputes are well documented in court records and need not be further elaborated here. In addition, legislative deliberations generally support the view taken by EPA in its Report to Congress that further study is needed before considering additional regulation for public and commercial buildings, and do not support SEIU's petition requests.

EPA is not, at this time, convinced that greater Federal regulation is the most responsible approach to the problem of asbestos in public and commercial buildings. EPA's position remains unchanged from that presented in the Administrator's letter transmitting the February 1988 Report to Congress. That letter, as discussed in Unit II.C., emphasized that there is currently an inadequate national infrastructure of trained personnel, a need to focus attention on the successful implementation of the AHERA schools rule, and inadequate information as to asbestos exposure in public and commercial buildings. In addition, SEIU has presented no evidence that current worker protection rules do not adequately protect against unreasonable risk to the service employees represented by SEIU. These reasons, taken together, prevent EPA from determining at this time what, if any, risk reduction would result from additional Federal regulation. Thus, the Agency cannot determine that Federal rules under TSCA are necessary to protect against unreasonable risk.

This reasoning applies to any type of rule, including rules SEIU characterizes as rules to ensure that the most beneficial and least harmful actions are taken while a national infrastructure is developed (petition page 3). EPA is not able to evaluate, given the current state of knowledge, the appropriate form of this type of rule to achieve risk reduction. At this point, EPA wants to preserve the flexibility of building owners to abate serious risks in particular buildings and does not want to mandate any actions by rules.

Congress seems to agree with the need to obtain more information before proceeding to rulemaking on asbestos in public and commercial buildings. In apparent direct response to the 1988 Report to Congress, the House Committee on Appropriations reported a bill earmarking $2 million, to be matched by private sources, for research to determine actual airborne asbestos levels in buildings and to characterize definitively the significance of peak exposure levels. See H.R. Rep. 100–701, 100th Cong., 2d Sess. at 25. The Committee places a high priority on developing more reliable exposure estimates of asbestos in buildings, as tens of billions of dollars may be required to address asbestos in buildings.

In reaching this conclusion, EPA focuses on only one aspect of the TSCA section 21 standard for determining whether to initiate rules under TSCA section 6—that is, whether an unreasonable risk can be shown to exist. EPA does not at this time need to address the issue of whether rules under TSCA are "necessary" to protect against that risk—that is, whether TSCA rules are the appropriate remedy. EPA identified several of these issues in its 1988 Report to Congress (pages 24–35). When EPA addresses the need for regulations, the Agency will more closely focus on such issues as whether a Federal regulation rather than State or local initiatives is more appropriate to deal with asbestos risks in buildings, or whether SEIU should pursue amendments to Federal worker protection rules under OSHA instead of the TSCA remedy.

SEIU's three supporting arguments do not alter EPA's position for the reasons discussed below.

1. *Asbestos presents a risk.* SEIU's assertions that asbestos has toxic properties and many persons are potentially exposed to the asbestos in public and commercial buildings do not complete the unreasonable risk determination needed to initiate TSCA section 6 rules. SEIU only shows the potential risk from asbestos in buildings, and does not in any way discuss the risk reduction that would result from Federal rules. Furthermore, as noted in EPA's letter transmitting its Report to Congress, a major rulemaking initiative could do more harm than good, particularly if it stretches the national infrastructure of accredited professionals and laboratories that should be devoted to schools. These likely countervailing risks undercut any hoped-for risk reduction from Federal action.

2. *EPA has effectively made an unreasonable risk finding.* SEIU's argument that EPA has effectively made the unreasonable risk determination which mandates rulemaking is similarly unavailing for several reasons. First, in its school inspection rule issued in 1982, EPA determined that the reduction in risk hypothesized in the rulemaking record justified only the minimal costs of an inspection rule for schools, and did not discuss the implications of a more comprehensive rule, as requested by SEIU (47 FR 23364). Second, EPA's 1988 Report to Congress shows that the societal effects of any rule for public and commercial buildings, even a rule limited to inspections, are much more far reaching than the 1982 schools rule. This is illustrated by the number of buildings alone (100,000 vs. 3.6 million). As noted in Unit III, a regulation imposing considerable societal burdens must be justified by better evidence of risk than a regulation imposing a lesser burden. The Report to Congress discusses at length the uncertainty of the risk attributed to asbestos in public and commercial buildings. This uncertainty, weighed against the societal burdens of potential regulation, makes it impossible, without further data and subsequent analysis, simply to transfer the unreasonable risk determination for schools to public and commercial buildings.

Finally, current OSHA rules, which were promulgated after the 1982 determination of unreasonable risk in schools, establish a permissible exposure limit for all workers and presume that suspect materials are identified before they are disturbed. SEIU participated in the rulemaking proceedings which led to these rules and has not demonstrated in its petition here why these rules are insufficient to protect workers from asbestos exposure. These rules, in part, have been remanded by a court to OSHA for revision. This action offers SEIU an opportunity to pursue the relief it seeks from OSHA rather than EPA. EPA has made it a practice to extend to public sector workers any protections related to asbestos which OSHA establishes for private sector workers, and EPA intends to continue to do so in the future.

3. *Using AHERA rules as a guide is inappropriate.* EPA disagrees with SEIU that use of the AHERA schools rule as a guide is counterproductive.

First, criticisms leveled at EPA's earlier guidance do not apply to using AHERA rules as a guide. While Congress criticized the vagueness of EPA's previous guidance documents, AHERA rules are a significant improvement. The rules provide detailed criteria and standards for dealing with asbestos. The rules also specify detailed criteria for accrediting persons who conduct asbestos-related work in schools. This includes initial training, examination, and continuing education for all persons involved in asbestos activities, including inspectors, management planners, abatement supervisors, and abatement workers. These rules were upheld against litigation challenge and, indeed, supported by SEIU which intervened on behalf of EPA. If the AHERA rules are used as guidance, they should alleviate any problems perceived in earlier guidance.

Similarly, in view of the nature of the AHERA rule, the internal EPA documents obtained by SEIU in earlier litigation and cited by SEIU as being critical of earlier Agency guidance do not apply to use of AHERA regulations as a guide. Those documents represent,

at best, anecdotal information and internal Agency discussions about problems with earlier voluntary programs. In any event, these documents were never considered probative by EPA, or by a court, to discredit any voluntary program to the extent that regulations should replace it.

Second, EPA is not encouraging broad voluntary action, but prudent action based on local circumstances. EPA counsels building owners to consider inspecting and/or taking broader action than that mandated by law only when appropriate and when qualified people are available to ensure the work is conducted properly. EPA's current position is that prudent building owners should turn to the AHERA rule for technical guidance as their own conditions and circumstances warrant. Thus, decisions on risk and risk reduction measures are to be made at the appropriate local level, and these case-by-case decisions would not burden the limited infrastructure of accredited and enforcement personnel as much as a regulatory requirement. Nor would the voluntary program limit the flexibility of building owners and managers to abate serious risks if they feel such action is needed under the circumstances.

## V. Conclusion

EPA shares the deep commitment of SEIU to protecting individuals from asbestos hazards in all public and commercial buildings. However, for the reasons stated above in this notice, EPA must deny SEIU's petition. EPA, in the absence of additional information on risk reduction, believes that an unreasonable risk determination cannot be made at this time. In this regard, EPA is especially concerned about the acknowledged inadequacy of the infrastructure of accredited professionals. Thus, EPA cannot determine that Federal rules under TSCA are necessary to protect against unreasonable risk and is not initiating a rulemaking proceeding under section 6 of TSCA at this time. EPA notes, however, that it does not believe it needs to reach other issues relating to whether rules under TSCA are the appropriate remedy to protect against risk from asbestos in buildings. These other issues, instead, will be addressed when EPA has obtained the information it has determined is lacking.

EPA has not permanently ruled out a regulatory response to the asbestos problem in public and commercial buildings. At some later time, EPA may, in fact, recommend an inspection rule or even greater Federal regulation. Yet, EPA believes that it would be inappropriate and unwarranted, at least at this time, to initiate a new regulatory inspection and abatement program for these buildings.

In the meantime, SEIU might be well advised to pursue protection of its members with OSHA, which has primary jurisdiction for providing that protection and which is even now reconsidering its asbestos rule. EPA is committed to extending OSHA's asbestos rules to public sector workers who are not covered by OSHA's protections and, in limited cases, to supplementing that protection. Since SEIU apparently has a fundamental disagreement with the scope of the OSHA asbestos rule, this disagreement should appropriately be taken up with OSHA rather than EPA.

EPA, however, has begun and intends to continue discussions with affected groups in the public and commercial buildings community. These groups include SEIU and other worker groups, building owners and managers, mortgage bankers, and former and present manufacturers of asbestos-containing materials. Together, these groups can help EPA review new exposure and efficacy information, assess the experience and information gained from the AHERA implementation and evaluation process, explore the merits of various regulatory strategies, and nurture the development of the nation's asbestos management and abatement capabilities, especially the infrastructure of accredited asbestos control professionals.

EPA expects to work closely and productively with these groups. In fact, elsewhere in this **Federal Register** is a notice which announces a public meeting to gather data and hear arguments which will assist EPA in assessing what future activity is necessary. This will allow the Agency to proceed quickly and effectively with any subsequent activity which may prove to be necessary to deal with the asbestos problem in public and commercial buildings.

## VI. Administrative Record

EPA has established a public record of those documents the Agency considered in denying SEIU's petition. The record consists of documents located in the file designated by Docket Control Number, OPTS-211023, located at the TSCA Public Docket Office. This Docket is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the following address: Environmental Protection Agency, Room NE-G004, 401 M Street, SW., Washington, DC 20460. The public record consists of all documents in the OPTS-211023 file and all documents cited in the documents in that file.

Dated: March 28, 1989.

**William K. Reilly,**

*Administrator.*

[FR Doc. 89-7932 Filed 4-3-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
April 4, 1989

Part IV

# Department of the Interior

National Park Service

Abandoned Shipwreck Act Guidelines; Proposed Guidelines; Notice

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Abandoned Shipwreck Act Guidelines

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Proposed guidelines.

**SUMMARY:** The Abandoned Shipwreck Act of 1987 (Pub. L. 100–298) directs the Director of the National Park Service, acting on behalf of the Secretary of the Interior, to develop and publish advisory guidelines within nine months of enactment of the Act. The guidelines are to assist State and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. As required by the Act, issuance of the guidelines is intended to enhance cultural resources, foster a partnership among the various interest groups, facilitate recreational access and use, and recognize the interests of those engaged in shipwreck discovery or salvage.

**DATES:** Written comments must be received on or before October 2, 1989.

**ADDRESSES:** Comments on these proposed guidelines should be addressed to Dr. Bennie C. Keel, Departmental Consulting Archeologist, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, or delivered to Room 4127C at 1100 L Street NW., Washington, DC, between 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Michele C. Aubry, Office of the Departmental Consulting Archeologist, at (202) 343–1879, or James P. Delgado, Maritime Preservation Program, History Division, at (202) 343–9528. Both telephone numbers work on commercial and FTS lines.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 28, 1988, the President signed into law the Abandoned Shipwreck Act (43 U.S.C. 2101). The purpose of the Act is to vest title to certain abandoned shipwrecks that are located in State waters to the respective States, and to clarify that the States have management authority over those abandoned shipwrecks.

Prior to enactment, many States claimed title and management authority over abandoned shipwrecks in their waters, and managed historic shipwrecks in a manner consistent with State historic preservation programs. However, under principles of admiralty law, Federal courts could assert jurisdiction over abandoned shipwrecks and treat historic shipwrecks as commodities lost at sea that are in marine peril and should be salvaged and returned to commerce. Salvage awards often disregarded a shipwreck's historical value, with the resultant loss of important historical and archeological information.

Enactment of the Abandoned Shipwreck Act clarifies the situation by asserting Federal title to certain abandoned shipwrecks located in State waters, and then simultaneously transferring title to the majority of those shipwrecks to the States to manage and protect.

In addition, the Act directs the National Park Service to prepare and publish, within nine months of enactment, advisory guidelines to assist the States and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The Act also requires that the National Park Service consult with the various public and private sector interests prior to developing the guidelines.

Although the National Park Service consulted with the various interest groups prior to developing the guidelines being issued hereinbelow, the Service would like to provide the public with the additional opportunity to review and comment on the guidelines as proposed. Comments received during the six month comment period will be fully considered and incorporated, as appropriate, into final guidelines.

#### Section by Section Analysis of the Act and its Legislative History[1]

*Section 1:* Section 1 provides a short title for Pub. L. 100–298, the Abandoned Shipwreck Act of 1987.

*Section 2:* Section 2 of the Act presents Congressional findings that the States have responsibility for managing a broad range of resources, including certain abandoned shipwrecks, that are located in State waters and submerged lands. The legislative history notes that, with the exception of warships and other public vessels, abandonment may be implied or inferred in those instances when an owner has not made a claim of possession or any control over the wreck. Abandonment of warships and other public vessels requires an affirmative act of abandonment on the part of the sovereign nation holding title.

*Section 3:* Section 3 of the Act contains definitions for the terms "embedded," "National Register," "public lands," "Indian lands," "Indian tribe," "shipwreck," "State," and "submerged lands." The legislative history clarifies Congressional intent for two terms.

In regard to the term "embedded," the Congress considers the tools of excavation required to gain access to an "embedded" shipwreck to not include diving equipment normally worn by recreational divers while exploring or viewing shipwreck sites.

"Submerged lands" are defined in reference to the Submerged Lands Act (43 U.S.C. 1301) plus three other statutes (48 U.S.C. 749; 48 U.S.C. 1705; 48 U.S.C. 1681) that describe the lands of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. "Submerged lands" are considered to be lands extending out three nautical miles from a State's coastline. The Congress notes that Texas, Florida, and Puerto Rico have submerged lands extending beyond three nautical miles, which was the limit of the United States territorial sea at the time of enactment of the Act, and directs those States to exercise their jurisdiction over abandoned shipwrecks beyond three nautical miles consistent with international law principles. Although the President issued Proclamation 5928 on December 27, 1988, to extend the limit of the United States territorial sea to 12 nautical miles, it does not extend or otherwise alter existing Federal or State laws, or any jurisdiction, rights, legal interests, or obligations derived therefrom. Accordingly, Proclamation 5928 does not affect the Abandoned Shipwreck Act.

*Section 4:* Section 4(a) of the Act sets forth Congressional policy on how the States are to carry out their responsibilities under the Act. The States are directed to develop policies for managing shipwrecks under their jurisdiction so as to protect natural resources and habitat areas, guarantee recreational exploration of shipwreck sites, and allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of the site's historical values and environmental integrity.

The legislative history clearly indicates that the Congress intends for the States to provide sport divers with unrestricted recreational access to all non-historic shipwrecks, consistent with human safety or the fragility of a particular shipwreck. However, State laws are to provide a method of legal recourse to persons denied access. Although the Congress distinguishes non-destructive access from access for

[1] Senate Report No. 100–241 (Committee on Energy and Natural Resources) and House Report No. 100–514, Part 1 (Committee on Interior and Insular Affairs) and Part 2 (Committee on Merchant Marine and Fisheries).

salvage or the collection of artifacts from historic shipwrecks, it does not intend for the States to discourage private salvage if it is consistent with the protection of a shipwreck site's historical values and environmental integrity.

Section 4(b) of the Act directs the States to establish underwater parks to protect shipwreck sites, and to make funds available from the Historic Preservation Fund for the study, interpretation, protection, and preservation of historic shipwrecks. Language in the legislative history encourages the States to work with sport divers to locate shipwrecks and establish underwater parks.

*Section 5:* Sections 5 (a) and (c) of the Act direct the National Park Service to prepare and publish, within nine months of enactment, guidelines to assist the States and appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. The guidelines are intended to enhance cultural resources, foster a partnership among the interest groups, facilitate recreational access and use, and recognize the interests of those engaged in shipwreck discovery or salvage. In the legislative history for section 5 of the Act, the Congress encourages the Service to consider current recreational and archeological uses in developing the guidelines. Identifying human safety, fragility, or particular shipwrecks as legitimate reasons for limiting full access, the Congress reiterates its intention that sport divers be allowed access to historic shipwrecks to the fullest extent practicable. The Congress also distinguishes sport diver access from access for the collection of artifacts.

Section 5(b) of the Act requires that the Service prepare the guidelines after consulting with various public and private sector interests. The Act and the legislative history identify such interests to include sport divers, dive operators, salvors, fishermen, archeologists, historic preservationists, State tourism industry and natural resource department representatives, the National Oceanic and Atmospheric Administration in the United States Department of Commerce, the Advisory Council on Historic Preservation, and State Historic Preservation Officers. The Congress encourages the Service to establish a committee of these interest groups to assist in development of the guidelines. Recognizing that the guidelines are advisory in nature, the Congress intends for the States to develop programs, or review and revise existing programs, that conform with the Act and the guidelines, and are consistent from State to State. If a State program appears to be inconsistent with the Act and the guidelines, the Congress intends that any affected party may bring that fact to the State's attention and that legal recourse should be provided under State law.

Federal agencies are directed to manage historic shipwrecks under their control or jurisdiction in a manner consistent with applicable Federal statutes and, to the extent possible, the advisory guidelines issued pursuant to section 5 of the Act.

*Section 6:* Section 6(a) of the Act asserts United States title to three categories of abandoned shipwrecks: those that are embedded in a State's submerged lands; those that are embedded in coralline formations protected by a State on its submerged lands; and those that are located on a State's submerged lands and are included in or determined eligible for inclusion in the National Register of Historic Places by the Secretary of the Interior. Procedures for listing or determining historic properties eligible for inclusion in the National Register are found at 36 CFR Parts 60 and 63.

Section 6(b) of the Act requires that the public be given notice of those shipwrecks to which United States title is asserted, primarily to ensure that sport divers and other interest groups know which shipwrecks are historically significant. However, in the legislative history the Congress notes that disclosure of locational information sometimes results in damage, vandalism and pilferage. The Congress suggests that the State or Federal agency having jurisdiction vary the degree of specificity in regard to disclosure of locational information, depending upon the particular circumstances.

Pursuant to section 6(c), with two exceptions, simultaneous with United States assertion of title, the United States transferred that title to the respective State in or on whose submerged lands the shipwreck is located. Section (d) identifies the exceptions as those shipwrecks located on public (meaning Federal) and Indian lands. Title to shipwrecks located on public lands remains with the Federal Government while title to shipwrecks located on Indian lands remains with the Indian tribe owning such lands. Title to United States warships also remains with the United States unless that title is abandoned by affirmative act. The Congress notes that mere passage of time or lack of positive assertions of rights are insufficient to establish abandonment of such shipwrecks.

The Congress notes in the legislative history that some National Parks are located on lands that are State-owned. In such cases, the Congress recommends that the State and the National Park Service enter into management agreements to ensure that the Service protects any abandoned historic shipwrecks within the park's boundaries.

Section 6(e) of the Act reserves certain rights by the United States and the States under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*) and the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*).

*Section 7:* Section 7(a) of the Act specifies that the law of salvage and the law of finds do not apply to abandoned shipwrecks to which the United States asserted title under the Act. The legislative history indicates that the Congress modified admiralty law in this manner because it does not believe that the shipwrecks covered by the Act are in marine peril. The Congress views shipwrecks not only as commercial resources, but as important recreational and archeological resources as well. The legislative history indicates that the Congress believes the States are better equipped than the Federal admiralty courts to manage these resources. State Historic Preservation Officers are identified as the entity best suited to preserve historic shipwrecks in State waters. The legislative history notes that all other shipwrecks not covered by the Act, including those in Federal waters, remain subject to admiralty law.

Section 7(b) of the Act states that the Act shall not change the laws of the United States relating to shipwrecks, other than those to which the Act applies. The legislative history identifies the Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1431 *et seq.*) as an example, noting that the Act does not affect the authority of the National Oceanic and Atmospheric Administration to designate and manage nationally significant shipwrecks within national marine sanctuaries in State waters.

Section 7(c) of the Act states that the Act shall not affect any legal proceeding brought prior to the date of enactment of the Act.

**Preparation of the Guidelines**

*Public Meetings.* To provide the public with the maximum opportunity to comment on the development of the guidelines, the National Park Service scheduled and held 11 public meetings during the months of September and October 1988. These meetings were announced by publishing two notices in

the **Federal Register** (53 FR 31941, August 22, 1988; and 53 FR 38792, October 3, 1988), issuing news releases nationally and locally, and sending announcements to over 2,000 interest groups, individuals, and editors of pertinent newsletters, magazines and journals.

Approximately 500 people attended the public meetings, which were held in Washington, DC; San Francisco, CA; Seattle, WA; Austin, TX; Beaufort, NC; Colchester, VT; Lyndhurst, NJ; Madison, WI; Tampa, FL; New Orleans, LA; and Charleston, SC. Over 120 people presented statements to voice their opinions or that of their organizations. These statements are recorded in 769 pages of transcripts.[2] In addition, about 130 people sent letters to the National Park Service to express their opinions or that of the organization they represent.

Forty-five percent of the commenters were sport divers, dive boat operators, dive instructors, or represented dive clubs. Twenty-four percent were professional or avocational archeologists, conservators, or historic preservationists. Sixteen percent represented local, State or Federal agencies. Ten percent were commercial or treasure salvors. The remaining five percent included a marine biologist and individuals who did not affiliate themselves with any particular interest group.

The two **Federal Register** notices (53 FR 31941 and 53 FR 38792) which announced the public meetings asked commenters to address eight issues identified by the National Park Service to be of major concern to the various public and private interest groups. The eight questions asked and a summary of the comments received are presented below.

*1. How should an historic shipwreck be defined?*

Many commenters agreed that the criteria used for determining a property's eligibility to the National Register of Historic Places was sufficient for defining an historic shipwreck. Commenters noted that States are familiar with the National Register criteria and that many States already use the criteria or similar specifications for historic shipwreck management. Several commenters stated that the definition of what is an historic shipwreck should be based not on age but, rather, on the historical significance of each shipwreck on a case by case basis. Other commenters felt that age was a strong determining factor, if not the only criteria for defining an historic shipwreck. Opinions on the age by which a shipwreck should be considered historic ranged from shipwrecks as young as 10 years in age to only those over 500 years in age.

*2. Should the States retain title to all artifacts and materials recovered from abandoned historic shipwrecks? If not, what portion should be retained?*

A large number of commenters stated that States should retain title to all artifacts recovered from historic shipwrecks. Other commenters favored dividing artifacts between the State and the finder or salvor, using an 80/20 or 75/25 split. Many commenters felt that artifacts should be exhibited in museums and other locations. A few commenters suggested that exact artifact duplicates should be given to the finder, loaned to museums, or sold to fund shipwreck management programs and activities.

*3. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others desiring access to abandoned historic shipwreck sites?*

Most commenters stated that sport divers should have unrestricted access to abandoned historic shipwreck sites for exploration as long as there is no disturbance of the site. Some commenters stated that unique sites should be protected from all user groups until States could determine the site's historical significance and fragility. Other commenters suggested that access be restricted when a shipwreck site was under investigation by archeologists or salvors. Restrictions for salvors were urged, although few specific recommendations were made.

*4. What, if any, restrictions should be placed on sport divers, salvors, fishermen, scientific researchers, and others on removal of artifacts from abandoned historic shipwreck sites?*

While many commenters advocated having no restrictions on artifact removal from historic shipwrecks, just as many recommended that some kinds of restrictions be imposed. Suggestions ranged from prohibiting artifact retrieval to issuing permits for recovery of artifacts. Many commenters recommended that permits be required for any person to conduct archeological recovery or salvage. In addition, it was recommended that only professional underwater archeologists or maritime historians, or wreck divers under their supervision, be allowed to remove artifacts. It also was recommended that any removal of artifacts be done in accordance with an archeological recovery plan approved by the State.

*5. What, if any, penalties or fines should be assessed against sport divers, salvors, fishermen, scientific researchers, and others who violate provisions in a State's program to manage historic shipwrecks?*

Many commenters felt that the establishment of penalties or fines would alienate the sport diving community and, thereby, discourage cooperation and information sharing with the State. Many commenters felt that penalties not only would be difficult to enforce, but also were viewed as unnecessary because divers monitor themselves. However, other commenters stated that penalties and fines were a necessary deterrent for noncompliance. Most commenters stated that if fines and penalties were imposed, they should be fair, reasonable, and flexible. Suggested penalties included misdemeanor and felony fines, confiscation of equipment and boats, and prison sentences. Other commenters recommended applying the same fines and penalties for submerged lands as those used for dry land.

*6. Should monetary rewards or other incentives be made available for reporting the discovery of historic shipwreck sites or the violation of provisions in a State's program?*

The majority of commenters favored providing monetary rewards and other incentives for reporting discoveries of historic shipwreck sites. Suggestions included awarding a percentage of the value of the find or the overall cost of the archeological project, providing tax benefits, awarding money from the sale of artifacts, issuing certificates and awards of appreciation, providing an opportunity to assist in documenting and recovering the site, and allowing the finder to keep artifacts. Other commenters felt that monetary rewards and incentives were unnecessary, and that people should report discoveries and violations as a matter of civic duty without any compensation. Others pointed out that State budgets generally are limited and that any monies made available for shipwreck programs should be directed toward identifying, evaluating and protecting historic shipwreck sites.

Regarding the reporting of violations in a State's program, some commenters felt a system such as an anonymous hot line should be established. A few commenters were concerned that such a

[2] Copies of the transcripts are available for purchase from Capital Hill Reporting, Inc., P.O. Box 27083, Washington, DC 20038-7083, telephone (202) 789-0818. In addition, each of the 11 hosts for the public meetings has a copy of the hosted meeting's transcript available for viewing. The Washington, DC, office of the National Park Service has copies of transcripts for all 11 public meetings available for viewing. Addresses for the hosts are contained in 53 FR 31941 and 53 FR 38792.

system could be abused by persons reporting false violators. Other commenters felt that providing incentives and monetary rewards for reporting program violations would foster an attitude of mistrust among the diving community, commercial salvors, and professional archeologists.

*7. Should the States provide training courses to sport divers on archeological methods that would lead to paraprofessional certification?*

A majority of commenters indicated that underwater archeology training courses should be available to sport divers, but that the training should be provided by the private sector rather than the State. This would relieve the cost burden from the States and the taxpayer, and would foster goodwill between the States and the diving community. Some commenters identified the National Association of Underwater Instructors, the Professional Association of Diving Instructors, and the Young Men's Christian Association as examples of diving organizations that already have underwater archeology courses as part of their diving certification training programs. Many commenters recommended that professional underwater archeologists and maritime historians be involved in designing underwater archeology training courses and programs for sport divers.

*8. Should the States encourage and use sport diver volunteers during the conduct of archeological surveys and excavations of historic shipwreck sites?*

Most commenters recommended that the States use volunteers, particularly to locate, survey and map shipwreck sites. Some commenters thought volunteers should participate only in survey work, although a few commenters included artifact analysis and conservation activities as well. It was generally felt, however, that activities must be supervised by professionals and that participation be preceded by formal archeological orientation through training classes or field schools. Concern was expressed that volunteers not be "used and abused" and that training requirements not be too strict. An additional consideration was the subject of insurance liability for volunteers participation.

*Survey of Existing State Shipwreck Programs.* To determine the range of existing shipwreck programs, the National Park Service developed a questionnaire that was sent to each State Historic Preservation Officer and State Archeologist on July 12, 1988. The questionnaire asked for information on the State's existing authorities and jurisdiction as well as pending legislation and regulations. It also asked each State to provide information on several topics anticipated to be of concern to various public and private sector groups, including information on the State's preservation activities, recreational and educational activities, and commercial fishing and salvage activities.

Responses have been received from 47 (or 84 percent) of the 56 States and territories polled. A brief summary of the responses is presented below. Although four of the nine States which have not responded are known to have submerged lands that contain abandoned shipwrecks, the summary information presented in this **Federal Register** notice is considered to be representative of State shipwreck programs.

*Authorities and Jurisdiction.* Although 27 respondents indicated that their States have laws or regulations which authorize the management of abandoned shipwrecks in State waters, only 20 respondents said that their States have programs to manage shipwrecks. Eighteen respondents indicated that their States currently are considering enacting (or revising) State laws or issuing (or revising) regulations which would authorize shipwreck programs.

One question asked respondents to identify which program area within the State has jurisdiction over the management of abandoned shipwrecks in State waters. The responses indicated that, in some States, only one program area has jurisdiction while, in other States, several program areas have jurisdiction. Twenty-five respondents indicated that their State's historic preservation agency or State Archeologist has some form of jurisdiction. Other program areas listed as having some kind of jurisdiction were agencies, departments, or commissions responsible for lands, parks and recreation, natural resources, conservation, environmental protection, transportation, community services, housing, and State.

*Preservation Activities.* Twenty-two respondents indicated that their State's historic preservation plan includes consideration of abandoned historic shipwrecks. Twenty-four respondents indicated that their State uses the National Register of Historic Places criteria to determine if a shipwreck is historic. Twelve other respondents indicated that State laws and/or regulations define what is a historic shipwreck.

Twenty-four respondents indicated that their State makes funds available from the Historic Preservation Fund for the identification, evaluation, interpretation, and/or preservation of historic shipwrecks. Seventeen respondents noted that their State employs underwater archeologists to inventory, evaluate, interpret and/or preserve historic shipwrecks.

Thirty-one respondents indicated that their State regulates archeological research through a permitting process. Although 29 of those States require archeological permittees to preserve and conserve artifacts and materials recovered from historic shipwrecks, only 15 have access to curatorial and conservation facilities and qualified staff. Twenty-seven of those States retain title to all artifacts and materials recovered by archeological permittees.

*Recreational and Educational Activities.* Twenty-four respondents indicated that their State provides access to shipwreck sites for recreational exploration by sport divers, as long as the divers do not remove any artifacts or other items from historic shipwrecks.

Fourteen of those States place some kind of restrictions on diver access. The most frequently cited reason for restricting diver access was if the shipwreck site is being archeologically studied or commercially salvaged under a permit.

Twenty-one respondents indicated that their State encourages and uses sport diver volunteers to conduct archeological surveys and excavations of historic shipwreck sites. However, only three of those States provide training courses on archeological methods to sport divers. Three respondents noted that their State provides monetary rewards or other incentives to sport divers for reporting the discovery of historic shipwreck sites.

Five respondents indicated that their State has established and manages underwater parks or areas to preserve and protect historic shipwrecks. Two respondents noted that their State has established and maintains underwater trains for the enjoyment and education of sport divers. Nineteen respondents indicated that their State provides courses, gives lectures, prepares exhibits, or issues publications to educate the general public on the values of historic shipwrecks.

*Commercial Fishing and Salvage Activities.* Four respondents indicated that their State regulates commercial fishing near abandoned shipwrecks. However, none prohibits or places restrictions on commercial fishing near historic shipwrecks.

Of the 28 respondents that indicated their State regulates commercial salvage

of historic shipwrecks, five said that such activity is prohibited. Twenty-two of the States that regulate commercial salvage of historic shipwrecks place conditions upon the salvor for the protection of the wreck's historical values. The most frequently cited conditions include requiring the salvor to prepare a research design, use archeological methods, prepare a professional report, preserve recovered artifacts and other materials, employ qualified underwater archeologists and marine conservators, and protect the environment. In addition, 12 of the States retain title to all artifacts and materials recovered, while 16 other States award a portion to the salvor. Six States have laws or regulations that specify the percentage to be retained by the State.

### Drafting Information

The primary authors of these guidelines are Michele C. Aubry (archeologist and program analyst) and James P. Delgado (maritime historian and diver) in the National Park Service, Washington, DC. Patricia C. Knoll (archeologist and diver) on contract to the National Park Service, Washington, DC, from the National Conference of State Historic Preservation Officers, also contributed to these guidelines.
Signed:

**Denis P. Galvin,**

*Acting Director, National Park Service.*

Dated: March 27,1989.

### Abandoned Shipwreck Act Guidelines

*Contents*



**Authority:** 43 U.S.C. 2101.

### Introduction

Under the Abandoned Shipwreck Act (43 U.S.C. 2101), the United States Government asserted title to three categories of abandoned shipwrecks: those that are embedded in a State's submerged lands; those that are embedded in coralline formations protected by a State on its submerged lands; and those that are located on a State's submerged lands and are included in or determined eligible for inclusion in the National Register of Historic Places. Upon asserting title, the United States Government transferred title to the majority of those abandoned shipwrecks to the States to manage. The United States retained title to abandoned shipwrecks that are located on public lands while Indian tribes hold title to abandoned shipwrecks that are located on Indian lands.

The Act encourages the States to carry out their responsibilities under the Act in a manner that protects natural resources and habitat areas, guarantees recreational exploration of shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of the site's historical values and environmental integrity.

The Act also directed the National Park Service to prepare the guidelines being issued hereinafter to assist the States and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. These "Abandoned Shipwreck Act Guidelines" are advisory in nature. The States and Federal agencies are encouraged to use them and other applicable historic preservation standards and guidelines for developing, reviewing, revising, and implementing programs to manage abandoned shipwrecks under their control or jurisdiction. Other standards and guidelines that would apply include the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and the National Park Service's "Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act" (53 FR 4727). However, agencies are free to adopt alternative approaches for establishing shipwreck programs that are consistent with the intent of the Abandoned Shipwreck Act.

The "Abandoned Shipwreck Act Guidelines" and the philosophy on which they are based are the result of three decades of shipwreck management experience within units of the National Park System. That experience includes surveying, identifying, evaluating, documenting, interpreting, managing, recovering, and protecting historic shipwrecks. As submerged cultural resources, the Service treats and manages historic shipwrecks in the same manner as it does other classes of cultural resources that are located on land.

The basic steps of shipwreck management are:

(a) Locate and identify all shipwrecks;

(b) Determine which shipwrecks are abandoned;

(c) Determine which shipwrecks are historic;

(d) Consult and maintain a cooperative relationship with the various shipwreck interest groups;

(e) Identify the different values that a shipwreck may possess and the wreck's current and potential uses;

(f) Provide unrestricted access to sport divers to explore shipwrecks;

(g) Preserve significant historic shipwrecks in place and protect them from damaging or destructive activities;

(h) Provide for public appreciation, understanding, and enjoyment of shipwrecks and maritime history;

(i) Conduct archeological research on shipwrecks where research will yield information important to understanding the past;

(j) Make provisions for private sector involvement in shipwreck research;

(k) Protect the rights of owners of non-abandoned shipwrecks;

(1) Make provisions to allow for commercial salvage and other private sector recovery of shipwrecks when such activities are in the public interest;

(m) Cooperate with other State and Federal agencies and sovereign nations having an interest in shipwreck management; and

(n) Educate and train the public to better appreciate shipwrecks and participate in shipwreck research projects.

The guidelines that follow in this document elaborate upon these basic steps of shipwreck management. The guidelines are divided into two parts. Part I contains definitions of key terms and Part 11 contains guidelines for managing abandoned shipwrecks.

### Part I. Definitions

As used for purposes of these guidelines:

An "Abandoned," shipwreck means any shipwreck to which title has been given up by the owner with the intent of never claiming a right or interest in the future. Sometimes an owner takes steps to affirmatively abandon a shipwreck such as by collecting insurance or by paying a salvage award to persons that salvage the vessel's cargo. By not taking any action after the wreck incident to recover or remove the vessel and its cargo, an owner shows intent to give up title. Such shipwrecks ordinarily are

treated as being abandoned. Although a shipwreck entitled to sovereign immunity often appears to have been abandoned by the flag nation, in fact it remains the property of the nation to which it belonged at the time of sinking unless that nation has taken formal action to abandon or transfer title. Any cargo aboard a vessel entitled to sovereign immunity also generally remains the property of the flag nation, unless the cargo had earlier been unlawfully captured by that nation. In such a situation, title to the cargo remains in the nation from which it had been captured. Shipwrecks entitled to sovereign immunity are wrecks of vessels used only on Government non-commercial service at the time of sinking. Examples would include warships and privately owned vessels that were chartered or otherwise appropriated by a sovereign for military purposes.

The "Act" means the Abandoned Shipwreck Act (43 U.S.C. 2101).

"Conservation" means a series of chemical and/or physical processes for treating artifacts and materials in order to allow their exposure to a non-aqueous environment without degradation.

A "Historic" shipwreck generally means a shipwreck that is listed in or determined eligible for listing in the National Register of Historic Places. When a shipwreck located in State waters is embedded either in the seabed or in coralline formations protected by a State, it may be treated as a historic shipwreck. When a question exists as to the historical significance of an embedded shipwreck, a request for a determination of eligibility may be made to the Secretary of the Interior. When a shipwreck is located on a State's submerged lands (i.e., the shipwreck is not embedded in the seabed or in coralline formations protected by a State) it must be listed in or determined eligible for listing in the National Register of Historic Places by the Secretary of the Interior before the United States asserts title under the Act. Procedures for listing or determining historic properties eligible for the National Register of Historic Places are found at 36 CFR Parts 60 and 63. Currently, there are 109 shipwreck listings in the National Register of Historic Places.

A "Shipwreck" is defined in the Act to mean "a vessel or wreck, its cargo, and other contents." The vessel or wreck may be intact or broken into pieces scattered on or embedded in submerged lands or coralline formations. A vessel or wreck includes, but is not limited to, its hull, rigging, armaments, apparel, tackle, cargo, and other contents. Isolated artifacts and materials not in association with a wrecked ship do not fit the definition of a "shipwreck."

"Submerged lands" is defined in the Act to mean "the lands (1) that are 'lands beneath navigable waters,' as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); (2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749); (3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Pub. L. 93–435 (48 U.S.C. 1705); and (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Pub. L. 94–241 (48 U.S.C. 1681)." In general, submerged lands include the bottomlands of navigable rivers and lakes and tidal and offshore marine waters out to three nautical miles (see section 2 of the Submerged Lands Act for the precise definition). As noted in the legislative history accompanying the Abandoned Shipwreck Act, the United States asserts sovereignty and title only to certain abandoned shipwrecks in or on submerged lands located within, but not beyond, three nautical miles, notwithstanding the special rights of Texas, Florida, and Puerto Rico in regard to submerged lands beyond that limit.

## Part II. Guidelines for Managing Abandoned Shipwrecks

### *Guidelines for Establishing a State Shipwreck Program*

Almost every State, including landlocked ones with navigable rivers and lakes, contains abandoned shipwrecks in its submerged lands. Section 6(c) of the Act transferred title to certain of those shipwrecks in State waters to the respective States. The Act and the legislative history clearly indicate that the Congress intends to encourage the States to manage abandoned shipwrecks in State waters in a manner that reflects the diverse values and multiple uses of shipwrecks. Those values and uses include, but are not limited to:

(a) Archeological values and uses, which include scientific study of the shipwreck site to extract information that enables reconstruction of past human behavior;

(b) Historical values and uses, which include those qualities of shipwrecks that make them eligible for listing in the National Register of Historic Places;

(c) Memorial values and uses, which include vessels that wrecked with loss of life, even if human remains are no longer present or visible;

(d) Monetary values and uses, which include public and private profit making activities such as generating tourism revenues from increased diving activity, publishing popular books, making movies, and salvaging valuable cargoes;

(e) Recreational values and uses, which include public use and enjoyment through such activities as scuba diving, snorkeling, spearfishing, and underwater photography; and

(f) Symbolic values and uses, which include shipwrecks whose careers or wreck events are extraordinarily significant to the nation's history and are reflected in the nation's literature, art, music, religious philosophy, or politics.

The following guidelines are offered to assist States in establishing programs to manage abandoned shipwrecks. States that have existing shipwreck programs will find these guidelines useful when reviewing current programs and determining if any legislative, policy or procedural changes should be made.

*Guideline 1: Involve interest groups.* States should hold public meetings and consult often with the various interest groups for suggestions on developing, revising, and implementing shipwreck program legislation, regulations, policies, and procedures. Groups that should be consulted include dive clubs, diving instructors, sport divers, dive boat operators, dive shops, fishermen, marina operators, underwater archeologists, maritime historians, nautical conservators, historic preservationists, salvors, marine biologists, and natural resource specialists. State and Federal agencies with related program interests also should be involved. Agencies with related program interests would include those responsible for parks, recreation, navigation, tourism, museums, submerged lands and natural resources, cultural resources, and fishing.

*Guideline 2: Assign responsibility for historic shipwrecks to a historic preservation agency.* States should assign responsibility for the management and protection of abandoned historic shipwrecks to an agency experienced in cultural resources management and historic preservation matters, such as the State Historic Preservation Officer or the State Archeologist. The agency should be charged with responsibility for developing and implementing a long-term plan for surveying, inventorying, evaluating, interpreting, and preserving historic shipwrecks located in State waters. The plan should establish multiyear objectives and schedules which can be used by the agency to

develop annual operating plans to carry out its responsibilities.

*Guideline 3: Provide adequate staff, facilities, and equipment.* The agency assigned responsibility for the management and protection of abandoned historic shipwrecks in State waters should have (or have access to) adequate professional staff, office and laboratory facilities, and diving and underwater survey equipment to carry out its responsibilities. The number of staff, facilities, and equipment will vary according to the needs and goals of each State. For example, an agency that plans to conduct its own surveys and inventories, or operate its own maritime museum, would require more professional and technical staff, equipment, and facilities than would an agency that plans to contract for such professional services.

The following questions should be answered to help determine appropriate staffing and funding levels:

(a) What is the total acreage of submerged lands in the State?

(b) How many abandoned shipwrecks are known to be present in State waters, and how many are estimated to exist?

(c) What is the amount of sport diving activity at shipwreck sites in State waters, and does the State promote or plan to promote such recreational activities?

(d) How many underwater parks and preserves exist or are planned, and what recreational and educational facilities are present or planned?

(e) What is the amount of historical and archeological research and commercial salvage activity at shipwreck sites in State waters, and what kind of program to regulate such activities does the State have or plan?

(f) How does the State plan to conduct inventories to identify and evaluate shipwreck sites in State waters (e.g., use its own staff, equipment and facilities; oversee contractors; systematically train and work with volunteers; or rely on sport divers, researchers, salvors, and fishermen on an ad hoc basis)?

(g) How does the State plan to conserve and subsequently exhibit artifacts and materials recovered from shipwreck sites (e.g., use its own staff, equipment and facilities; oversee contractors; rely on sport divers, researchers, and salvors; or loan items to local museums and other repositories)?

(h) What kind of educational, interpretive, publication, and general public awareness programs does the State have or plan?

*Gudeline 4: Cooperate with State and Federal agencies.* For a shipwreck program to be effective, the agency assigned management responsibility for abandoned shipwrecks should cooperate and work closely on a routine basis with other State and Federal agencies that have submerged lands related responsibilities, including the:

(a) State's park authority to designate and operate State underwater parks or preserves, and develop appropriate interpretive, recreational and educational programs;

(b) State's museum to conserve, store, study, and exhibit artifacts and other materials recovered from abandoned shipwrecks;

(c) State's submerged lands, natural resources, and marine fisheries agencies to ensure that:

(1) Shipwreck activities do not have an adverse affect on natural areas, geological formations and habitat areas, particularly coralline formations and other marine resources protected by the State; and

(2) Activities related to managing submerged lands, natural resources, and marine life do not have an adverse affect on historic shipwrecks;

(d) State's coastal zone management office to inventory and designate abandoned historic shipwrecks as "areas of particular concern," and ensure that shipwrecks so designated are protected from development of land and water resources in the coastal zone in accordance with the State's coastal zone management program pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*);

(e) State's law enforcement agency and attorney general's office to protect shipwrecks in State waters that the State holds title to;

(f) United States Army Corps of Engineers and the United States Coast Guard to ensure that:

(1) Shipwreck survey, inventory, documentation, recovery, and protection activities do not pose navigational hazards; and

(2) Activities related to the Army Corps of Engineers' dredging, construction, and permitting programs do not have an adverse affect on historic shipwrecks;

(g) Advisory Council on Historic Preservation and appropriate Federal agencies to coordinate any necessary compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470) related to a Federal, federally funded or federally licensed undertaking;

(h) National Oceanic and Atmospheric Administration, which designates and manages nationally significant shipwrecks located within National Marine Sanctuaries, some of which are held in State ownership; and

(i) National Park Service, which manages and protects shipwrecks located within units of the National Park System, some of which are held in State ownership.

*Guideline 5: Establish a shipwreck advisory board.* States should establish a shipwreck program advisory board to develop and foster a continuing partnership among the various interest groups. As appropriate to the needs of each State, advisory board members should include a sport diver, a dive instructor, a dive boat operator, a commercial fisherman, a commercial salvor, a maritime historian, an underwater archeologist, a nautical conservator, a marine biologist, and representatives from appropriate State agencies. Duties of the advisory board should include making recommendations to the State on:

(a) Promulgation of shipwreck program regulations and policies;

(b) Establishment of a permit program for the archeological recovery of abandoned historic shipwrecks;

(c) Establishment of a permit program for the commercial salvage of abandoned shipwrecks;

(d) Establishment of underwater parks and preserves, and other protection, interpretation, and education programs; and

(e) Periodic review and monitoring of program operations.

*Guideline 6: Prosecute persons who violate the program.* States should ensure that they have the authority to prosecute persons who willfully damage or vandalize abandoned shipwreck sites located in underwater parks or preserves, or recover artifacts and materials from abandoned historic shipwrecks without the necessary permits. Criminal fines and civil penalties for violating provisions of the State's shipwreck program should be commensurate with the nature of the violation, and should include community service in the preservation of historic shipwrecks. Fines and penalties for second and subsequent violations should be more stringent than those for the first violation. Information on restrictions, fines, and penalties should be distributed to affected interest groups and posted on or near shipwreck sites. Artifacts and other materials recovered illegally from abandoned historic shipwrecks should be confiscated, conserved and preserved by the State. Fines and penalties collected should be used to:

(a) Restore damaged wreck sites and their immediate environment;

(b) Conserve and preserve confiscated artifacts and other materials;

(c) Further the efforts of shipwreck research and protection; and

(d) Enhance the public's appreciation of historic shipwrecks.

*Guideline 7: Authorize acceptance of donations and cooperative agreements.* For purposes of locating, evaluating, managing, interpreting, and protecting abandoned historic shipwrecks, States should ensure that they have the authority to:

(a) Accept donations of funds, personal property, or services from other parties; and

(b) Enter into cooperative agreements with scientific and educational institutions.

*Guideline 8: Establish a procedure for confirming the abandonment of shipwrecks.* If a State has reason to believe that a shipwreck site located in its waters may not be abandoned, prior to taking any action that would affect the shipwreck the State should take steps to confirm that the shipwreck was abandoned and that the State now holds title to the wreck. If the shipwreck is thought to be a United States warship or other vessel used at the time of sinking only on United States Government non-commercial service, the State should contact the Office of the Judge Advocate General in the United States Department of the Navy for assistance. If the shipwreck is thought to be a warship belonging to another sovereign nation, or other vessel used at the time of sinking by another sovereign nation only on non-commercial service, the State should contact the Bureau of Oceans and International Environmental and Scientific Affairs in the United States Department of State for assistance. If the shipwreck is not abandoned, the State should contact the title holder concerning the management, protection and disposition of the vessel. If the shipwreck is the property of another sovereign nation, any contact with that nation should be through the United States Department of State.

*Guideline 9: Establish a procedure for treating human remains in shipwreck sites.* Where a shipwreck site contains human remains, the State agency having jurisdiction should make a reasonable effort to contact relatives of the deceased to discuss the most appropriate treatment of the remains. Until the agency makes a decision regarding disposition, it should refrain from taking an action that would disturb the remains. All remains should be treated with dignity and respect.

*Guideline 10: Establish a procedure for reviewing and commenting on State and Federal activities that may adversely affect historic shiipwrecks.* The State agency assigned responsibility for the management and protection of abandoned historic shipwrecks should ensure that it has an opportunity to review and comment on State and Federal activities (including funded, licensed and permitted activities) that may disturb, alter, damage, or destroy historic shipwreck sites in State waters. Any disturbance should be allowed only with appropriate archeological mitigation.

*Guideline 11: Use applicable historic preservation standards and criteria.* The State agency assigned responsibility for the management and protection of abandoned historic shipwrecks should ensure that applicable historic preservation standards and criteria are used in the operation of the State's shipwreck program. For example, the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) provide advice on a wide range of archeological and historic preservation activities, including planning, survey, evaluation, registration, preservation, and documentation. Copies of the "Secretary's Standards and Guidelines," issued on September 29, 1983, may be obtained from the Interagency Resources Division of the National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Similarly, the National Register's criteria for evaluation, contained in 36 CFR Part 60, should be used to evaluate the historical significance of abandoned shipwrecks.

*Guidelines for Funding*

Adequate funding is the key for the successful operation of State and Federal agency programs for the management and protection of abandoned shipwrecks under their respective control or jurisdiction. Without sufficient funding, an agency would have difficulty carrying out its responsibilities under the Act and other Federal and State historic preservation statutes and regulations. These responsibilities include the survey, inventory, evaluation, documentation, and protection of historic shipwrecks sites. It also includes the conservation, storage, study, and exhibition of artifacts and other materials recovered from historic shipwreck sites. Expenses associated with the management and protection of abandoned historic shipwrecks can be high, given the costs of conducting scientific research underwater and conserving materials recovered from an underwater environment. But, the results of such research and conservation efforts also can generate substantial revenues through increased tourism. The best example is in Sweden, which raised and conserved the 17th century warship the *Vasa*. Revenues generated annually into the Swedish economy are said to be $275 million.

The following guidelines are offered to assist the States and Federal agencies in securing and allocating funds, and generating revenues for carrying out their responsibilities to manage and protect abandoned historic shipwrecks.

*Guideline 1: Fund the shipwreck program from annual appropriations.* State and Federal agency offices charged with the responsibility for managing and protecting abandoned shipwrecks under the agency's jurisdiction should be funded from annual appropriations. Separate appropriation requests should be made to conduct special studies at a particular shipwreck site, or to study an area for possible designation as an underwater park or preserve. If approved by the legislature, a commitment should be made to fund the study to completion. For example, if a State legislature approves a special request to excavate an historically significant shipwreck, sufficient monies should be made available not only for the excavation, but for the laboratory analysis, conservation treatments, storage in an appropriate repository, report preparation, and public interpretation as well. Because such studies ordinarily are completed over the course of several years, agencies should provide multiyear estimates prior to initiating studies.

*Guideline 2: Fund projects from the Historic Preservation Fund.* Section 4(b) of the Act directs the States to make Historic Preservation Fund (HPF) monies available, in accordance with Title 1 of the National Historic Preservation Act (16 U.S.C. 470), for the study, interpretation, protection, and preservation of historic shipwrecks and properties. HPF grants are available only after appropriation and thus may or may not be available. If and when HPF grants are made to the States without restrictions to the contrary, States should include historic shipwrecks within the scope of their program of eligible activities. In particular, historic shipwrecks should be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan. This will enable the State to more effectively identify management needs, set priorities, undertake archival research, survey, inventory, evaluate, document, interpret, and protect historic shipwrecks located in State waters.

*Guideline 3: Fund projects using Coastal Zone Management grants.* The National Oceanic and Atmospheric Administration in the United States Department of Commerce has identified section 306 of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) as a funding authority to assist States in developing and implementing shipwreck management programs. Subject to annual appropriation by the United States Congress, without restrictions to the contrary, Coastal Zone Management (CZM) grant monies may be made available under section 306A(b) of that Act for:

(a) Preserving or restoring specific areas that are designated under the State's coastal zone management program because of their conservation, recreational, ecological or esthetic values, or because of their national significance;

(b) Redeveloping deteriorating and underutilized urban waterfronts and ports that are designated under the State's coastal zone management program as "areas of particular concern;" and

(c) Providing increased access to public beaches, coastal waters and other coastal areas.

Section 306 CZM grants could be of tremendous value to States as sources of funding for managing and protecting abandoned shipwrecks. For example, when developing an underwater park, grant monies might be used to identify and designate historic shipwrecks in the park as "areas of particular concern;" rehabilitate piers and replace pilings for increased public access and recreational use; install bulkheads for increased public safety; and develop educational and interpretive materials.

*Guideline 4: Apply for other public and private grants.* Subject to annual appropriations by the United States Congress for such purposes, other public monies may be available for shipwreck projects. For example, the National Science Foundation, the National Endowment for the Humanities, and the National Trust for Historic Preservation may have funds available for such purposes. Other sovereign nations may be willing to participate in projects to study shipwrecks connected with their maritime heritage. Public investors and corporate and private sponsors also may be willing to underwrite shipwreck projects in exchange for media rights or advertising.

*Guideline 5: Use other appropriate Federal funding authorities.* The National Historic Preservation Act (16 U.S.C. 470) and the Archeological and Historic Preservation Act (16 U.S.C. 469–469c) identify several methods for Federal agencies to fund studies to identify, evaluate, and recover data from historic shipwreck sites that may be affected by a Federal undertaking or a federally assisted, licensed or permitted project or program. Subject to annual appropriations by the United States Congress for such purposes, Federal agencies may generally:

(a) Include costs for conducting underwater surveys and identifying and evaluating shipwreck sites in planning budgets;

(b) Include costs for excavating an historic shipwreck and preserving recovered artifacts and materials and associated records in mitigation budgets;

(c) For federally assisted projects, reimburse grantees for costs incurred conducting preservation activities as a part of the grant project;

(d) For federally licensed or permitted projects, charge reasonable costs for preservation activities to Federal licensees and permittees as a condition to the issuance of the license or permit; and

(e) For Federal projects and programs carried out by a State on behalf of the Federal agency, reimburse the State for costs incurred conducting preservation activities.

*Guideline 6: Encourage volunteers to participate in projects.* Dive clubs and individual sport divers frequently are willing to volunteer their diving skills and personal equipment to public agencies to help locate, evaluate, map, and preserve shipwrecks. For example, sport divers assisted public agencies in surveying and excavating the *Noquebay* an 1890s schooner at Apostle Islands National Lakeshore, and the *Stamboul*, an 1843 built whaling bark near Benicia, California. One of the most well known international examples is the assistance provided by the British Sub-Aqua Club on Henry VIII's flagship the *Mary Rose*. Agencies should encourage sport divers trained in archeological techniques to participate in professionally supervised surveys, test excavations, shipwreck mapping projects, and other shipwreck preservation activities. If volunteers participate in projects funded in part by Federal grants, the monetary value of the volunteer services may be used under certain Federal grant programs as a match for Federal funds.

*Guideline 7: Coordinate efforts with State and Federal agencies.* State and Federal agencies having jurisdiction over contiguous submerged lands should enter into written agreements to coordinate their efforts to conduct archival research, surveys and inventories. Jointly conducting studies at a regional level will save money and manpower, reduce duplication of effort, and result in a more complete and extensive assessment of known and potential abandoned shipwrecks in the areas studied.

*Guideline 8: Contact other agencies and nations that may have an interest.* Where a particular shipwreck may be of historical interest to another State or Federal agency, or other sovereign nation, the agency having jurisdiction should contact that agency or nation concerning their participation in archeological studies. Agencies should not conduct studies on vessels entitled to sovereign immunity without the permission of the sovereign claiming title. Any contact between an agency and the sovereign should be through the Bureau of Oceans and International Environmental and Scientific Affairs in the United States Department of State, Washington, DC 20520.

*Guideline 9: Complete projects.* State and Federal agencies should not undertake projects or issue permits to excavate or salvage historic shipwrecks unless the:

(a) Agency has the funds to properly conserve, store, study, report on, and exhibit the recovered artifacts and materials, and associated records; or

(b) Archeological permit applicant or salvor has agreed to provide those services, in perpetuity, on behalf of the agency; or

(c) If a portion of the recovered artifacts and materials are awarded to the salvor, the agency has the funds to provide those services for its portion of the collection and the salvor has agreed to provide those services for that portion of the collection awarded to the salvor.

*Guidelines for Survey and Inventory*

Section 6(b) of the Act requires that adequate notice be provided to the public of any shipwreck to which title is asserted under the Act. States and Federal agencies should, therefore, work to develop a detailed understanding of the extent, nature, and location of all shipwrecks on their submerged lands to which the Act asserted title. Such an understanding is possible only through survey of the State's submerged lands and an inventory of shipwrecks. The following guidelines are offered to assist States in surveying for and inventorying shipwrecks.

*Guideline 1: Prepare an archeological assessment of the survey area.* Prior to beginning survey work, a professional maritime historian should assess the potential for and predict the locations of shipwrecks that may be present in the survey area. Assessments should be based on available primary and

secondary sources on shipwrecks, including wrecked vessels that were salvaged or refloated. Assessments should also include information solicited from fishermen, divers, and other knowledgeable individuals. Assessments should identify geomorphological and climatological factors and historic events such as military engagements or natural disasters which may have caused vessels to founder or wreck. If individual wreck sites are known, the assessment should summarize the vessel's structural features, career, the wreck incident, and any recovery or salvage. The assessment should indicate whether the wreck had been located by salvors, archeologists, fishermen, or sport divers. The approximate or known, verified location of the wreck should be plotted on navigational charts to determine areas that should be surveyed.

*Guideline 2: Prioritize surveys.* Surveys should primarily focus on areas where shipwrecks are known or expected to be found. In addition, priority should be given to surveying areas subject to high visitor use, dredging, dumping, and other activities that may damage shipwrecks. If the assessment indicates that no wrecks are known or expected to have occurred in a given area, the area should be assigned a low priority for survey until new information indicates otherwise.

*Guideline 3: Coordinate surveys.* To the extent possible, surveys should be coordinated with other surveys being undertaken by other State and Federal agencies. The results of surveys should be shared with other State and Federal agencies having responsibilities for submerged lands and abandoned shipwrecks. At a minimum, surveys should be coordinated with and results provided to the State Historic Preservation Officer and the State Archeologist for inclusion in the State's historic properties inventory.

*Guideline 4: Use scientific survey methods and techniques.* Surveys should employ scientific survey methods and techniques. Magnetometers, side-scan sonar, subbottom profilers, and remote operated vehicles often provide cost effective coverage for deep water sites. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of an area. Surveys should be conducted by a team that includes, as a minimum, persons trained in the use of remote sensing equipment and professional archeologists to examine and analyze readings. All tapes and equipment readings, as well as field notebooks and logs generated during surveys should be collated and archivally saved for future study. Reports detailing areas surveyed, survey methods, and results should be prepared and published.

*Guideline 5: Record shipwreck locations.* Areas surveyed should be recorded using accurate positioning systems to determine wreck locations. The location of each shipwreck located during the survey should be recorded on a map by using a standard coordinate system such as Universal Transverse Mercator grid, Loran C, latitude and longitude, and visual sightings.

*Guideline 6: Ground-truth shipwrecks and anomalies.* All shipwrecks and unverified anomalies located in a remote sensing survey should be ground-truthed by either remote operated vehicle or divers to be evaluated. Evaluations should include assessments by professional archeologists and historians.

*Guideline 7: Prepare a shipwreck inventory.* An inventory of all known, surveyed shipwreck sites should be prepared and maintained. Each historic shipwreck site should be assigned a trinomial archeological site number. At a minimum, the inventory should contain the wreck's popular name, site number, location, owner, brief description of its historical significance, and whether it is listed in or eligible for listing in the National Register of Historic Places or a State registry. Documents such as field notes, historic information, photographs, reports, and site maps relating to each shipwreck in the inventory should be maintained. Agencies are encouraged to use the National Park Service's National Maritime Initiative Inventory format as a model.

*Guidelines for Evaluation*

Section 5(a) of the Act requires that these guidelines seek to maximize the enhancement of cultural resources and recognize the interests of individuals and groups interested in shipwreck discovery and salvage. As shipwrecks are discovered, each shipwreck should be evaluated to determine whether it is historic or non-historic.

*Guideline 1: Use data collected during archival research and field surveys.* Evaluations ordinarily require information collected during archival research and field survey of the wreck. Surveys should document the wreck through maps, drawings, video, film, or photographs, determine the extent of associated scattered wreckage, locate any human remains, and ascertain the nature and extent of surviving cargo. The type, age, and if possible, specific identity of the vessel should be determined. Shipwreck evaluation teams should include professional archeologists, historians, marine biologists, recreational planners, sport divers, and others as determined by the analysis of survey and inventory data.

*Guideline 2: Use non-destructive methods.* Shipwrecks should be evaluated in as non-destructive and non-disturbing a manner as possible. If possible, evaluations should be made without removing shipwreck materials or artifacts. If materials must be removed, such as when the wreck site is encrusted, the amount of materials removed should be as limited as possible to make evaluations, and done using archeological methods. This is particularly important in cases where historic or archeological value is suspected.

*Guideline 3: Professionals and interest groups should be involved.* Evaluation of a shipwreck's historic and non-historic values should include review and comment by interested professional, avocational, and other interest groups, appropriate State and Federal agencies, and the State's shipwreck advisory board, if one exists.

*Guideline 4: Nominate historic shipwrecks to historic registers.* If it appears that the wreck is historic, sufficient information should be gathered to nominate the wreck to the National Register of Historic Places and any State registers. Historic shipwrecks of exceptional national significance should be nominated for designation as a National Historic Landmark. Nominations should be subject to professional and public review by the various interest groups prior to submission to the State Historic Preservation Officer and/or the Keeper of the National Register. National Register Bulletin Number 20 entitled "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places" provides advice on preparing National Register nomination forms.

*Gudelines for Documentation*

Documenting historic shipwrecks during surveys aids in evaluation and interpretation efforts. Documenting a shipwreck also provides important baseline information for managing and protecting the site. Once a shipwreck has been documented, it is then possible to assess changes to the wreck site over time. These changes may result from vandalism, water currents, water pollution, anchor damage, or attrition from intensive diver use. If comparing a wreck's current condition to its original

documentation shows significant change or damage, then steps can be taken to rectify the situation.

*Guideline 1: Document historic shipwrecks.* At a minimum, historic shipwrecks should be mapped and photographed. Drawings should be made of unique, representative, and significant features. Information on the vessel's history also should be compiled.

*Guideline 2: Use Historic American Engineering Record standards.* Drawings of wrecks, particularly intact vessels, should conform, when possible, to the Historic American Engineering Record's "Standards for Documenting Historic Vessels."

*Guideline 3: Take photographs.* Photographs of wrecks should include both black and white photographs and color slides of the wreck, artifacts, and important features. Historic photographs of the vessel when afloat and of the actual wreck event should be included if they exist. All photographs should be clearly labeled.

*Guideline 4: Make a video.* If possible, a video survey should be made. Video surveys should be oriented to a map of the wreck that shows the passes over or through the wreck site. Several passes should be made to provide as comprehensive a video tour of the wreck as possible. Detailed video footage should be made of noteworthy, fragile, or dangerous features.

*Guideline 5: Map sites.* Archeological site maps should be prepared for historic shipwrecks. By accurately plotting individual artifacts on the site map, agencies can measure attrition of artifacts over time.

*Guideline 6: Maintain documentation in one location.* All documentation of a shipwreck site should remain together in a central repository with survey records, reports, and inventory forms. For safety reasons, duplicates should be made and retained in a separate location.

*Guideline 7: Make documentation accessible to interested parties.* Shipwreck documentation should be made accessible to the public for interpretation and appreciation. Specific documentation for interpretive purposes should be undertaken. Documentation of historic shipwrecks, particularly drawings and plans, should be published. However, prior to releasing site locational information, States and Federal agencies should assess the risk of theft or vandalism. Maps and associated documentation containing precise locational information should be considered privileged information if its disclosure would create a risk of harm to the wreck site. Conversely, agencies should release locational information on wreck sites to which visitation is encouraged.

*Guidelines for Public Access*

Section 4(a) of the Act says that the Congress intends for the States to provide reasonable access to the public to abandoned shipwrecks, and guarantee recreational exploration of shipwreck sites. Access by the public is beneficial for tourism, recreation, public enjoyment and appreciation, and preservation. The following guidelines are offered to assist States and Federal agencies in determining reasonable access.

*Guideline 1: Consult with interest groups.* Agencies should consult with the various interest groups, the State Historic Preservation Officer, the State Archeologist, and pertinent State and Federal agencies prior to imposing any restrictions on access to abandoned shipwrecks under the agency's jurisdiction. Decisions to restrict access should be made on a case by case basis and only after considering public comments and the values and uses of the particular shipwreck. Restrictions should be practical and fairly administered to the different interest groups.

*Guideline 2: Provide public notice of restrictions.* Once a decision has been made to restrict access, the public should be provided notice of the restrictions. Public notice might include but not be limited to notation of protected or restricted shipwrecks on navigation charts, posting notices on the wreck site and at marinas and dive shops, and notifying charter boat operators.

*Guideline 3: Provide access to historic shipwreck sites.* Any person should be able to freely inspect, study, explore, photograph, measure, record, or otherwise use and enjoy an historic shipwreck in State or Federal waters if the use or activity does not involve damaging or removing parts or portions of the shipwreck or its immediate environment.

*Guideline 4: Restrict access to few, if any, historic shipwrecks.* Access should be restricted at historic shipwrecks that are:

(a) Extremely fragile or suffering deterioration or attrition due to unrestricted access; or

(b) Being studied or salvaged under a valid archeological or salvage permit.

*Guideline 5: Encourage access to shipwrecks in parks and preserves.* States should consider establishing underwater parks and preserves to protect historic shipwrecks that are unique, well preserved, and valuable for recreation purposes. Public facilities to support diver access and visitor appreciation should be provided in these parks and preserves, as appropriate (see the Guidelines for Establishing Underwater Parks and Preserves).

*Guideline 6: Establish lists of shipwrecks having recreational value.* A listing of shipwrecks having recreational value in the State should be prepared in cooperation with sport divers, charter boat operators, historians, archeologists, fishermen, scuba associations, certification bodies, and dive clubs. This listing should include a map with LORAN coordinates, list depth and general bottom conditions, and provide an appraisal of diver skill necessary to visit each wreck. In addition, sport diver access to wreck sites having recreational value should be facilitated through placement of marker buoys and anchor moorings.

*Guidelines for Interpretation*

Section 5(a) of the Act requires that these guidelines seek to maximize the enhancement of cultural resources. Section 4(2)(b) also states that funds shall be made available for various reasons including interpretation. Interpretation of shipwreck history and values helps the public better understand and appreciate shipwrecks, and is the only means for imparting to the public the historical information and archeological discoveries that result from shipwreck research. The following guidelines are offered for the interpretation of historic shipwrecks.

*Guideline 1: Interpret publicly owned shipwrecks.* Consistent with an agency's primary mission, interpretation and public education programs should be a component of any State or Federal agency's management plan for historic shipwrecks.

*Guideline 2: Interpret shipwrecks for all interest groups.* Shipwreck interpretation should reach as broad an audience as possible. Interpretive materials on shipwreck sites and maritime history should be prepared for divers and non-divers of all age groups.

*Guideline 3: Use the printed media to disseminate shipwreck research results.* The results of shipwreck research should be presented in professional reports as well as non-technical popular publications such as magazines, books (including children's books), brochures, exhibits, videos, and slide shows.

*Guideline 4: Use museums to disseminate information and educate the public.* Museums and visitor centers which interpret local, regional, or national maritime history should interpret and educate the public through exhibits, videos, slide shows, and

lectures on shipwrecks, maritime history, and underwater archeology.

*Guideline 5: Provide lectures and temporary exhibits.* Public presentations and temporary exhibits on maritime history, underwater archeology, diving, underwater photography, and marine resources found at wreck sites should be made available to libraries, dive clubs, dive shops, boat and dive shows, marinas, historical societies, community colleges, local museums, and other appropriate outlets.

*Guideline 6: Build models of vessels.* Models of intact, historically significant shipwrecks should be made to provide detailed, small-scale orientation and interpretation for divers and non-divers. Models would be particularly useful when diving is difficult or restricted (such as USS *Arizona*) or when sufficient public interest in the shipwreck exists (such as the USS *Monitor*). The process of building models also can be a popular and successful interpretive activity.

*Guideline 7: Include interpretive materials in parks and preserves.* Underwater parks or preserves and underwater shipwreck trails can be used to effectively interpret shipwreck sites for divers. Trails and wreck sites should be marked with permanent signs. In addition, a site map and brochure, enclosed in mylar and small enough to fit into a buoyancy compensator pocket, could be prepared for individual wreck sites.

*Guideline 8: Discourage the recovery and display of intact shipwrecks.* Recovering whole historic shipwrecks for display and interpretation on land is discouraged. The costs for raising, conserving, and maintaining a shipwreck are prohibitively expensive and never ending. Agencies should consider recovering only extremely significant or endangered historic shipwrecks. However, no shipwreck should be recovered unless sufficient funds are made available to document and recover it archeologically and to conserve, maintain, and interpret it for the public.

*Guidelines for Education*

Section 5(a)(1) of the Act states that the guidelines shall seek to maximize the enhancement of cultural resources. Sport divers, salvors, fishermen, archeologists, and others are interested in discovering, exploring, studying, protecting, and recovering shipwrecks. The following guidelines are offered to assist States and Federal agencies in encouraging and promoting both public and private sector programs to educate the various interest groups in the preservation of historic shipwrecks.

*Guideline 1: Use existing training programs.* Many professional diving organizations and other educational and scientific organizations offer certificate programs and courses to train divers in shipwreck diving and basic underwater archeological skills. States and Federal agencies should contact those organizations to ensure that:

(a) Shipwreck diving courses teach divers non-destructive, preservation oriented behavior; and

(b) Professional underwater archeologists and maritime historians are involved in teaching underwater archeology courses.

Agencies also might work with those organizations to produce a manual for volunteers consisting of information from the training courses.

*Guideline 2: Encourage development of training programs by the private sector.* In States where shipwreck diving and underwater archeology courses are not available for sport divers, States and Federal agencies should contact professional diving organizations and other appropriate educational and scientific organizations to encourage them to develop and offer such courses. The knowledge and skills of historical, archeological and education professionals should be utilized in preparing curricula.

*Guideline 3: Train sport divers in basic archeological methods.* Underwater archeology courses designed for sport divers should provide basic training in scientific methods to research, locate, record, and report shipwrecks. At a minimum, course content should include background in archival research, survey methods, site mapping, illustration, diagnostic measurement skills, standard vessel architecture, artifact identification and conservation, ethics, and responsibilities under State and Federal laws and international treaties. Advanced courses could provide training in excavation techniques and nomination of historically significant shipwrecks to the National Register of Historic Places. These kinds of training courses will greatly assist sport divers who wish to assist State and Federal agencies and professional underwater archeologists conducting shipwreck projects.

*Guideline 4: Establish an information sharing network.* States should establish an information sharing network among archeological organizations and professionals, dive clubs and associations, educational institutions, and other interested persons to distribute information on underwater archeological resource projects.

*Guideline 5: Encourage scientific and educational organizations to participate in shipwreck projects.* States and Federal agencies should contact universities, colleges, and other scientific or educational organizations that offer professional underwater archeology degree programs or courses, and encourage them to participate in shipwreck research projects. For example, projects could be used as field schools for training students or as research sites for student's theses or dissertations.

*Guidelines for Volunteer Programs*

Section 5(a)(2) of the Act states the guidelines shall seek to foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources. Such a partnership could be developed and nurtured through well organized, well supervised volunteer programs. With proper training and qualified supervision, volunteers are an effective, efficient, and economical resource for shipwreck management. The following guidelines are offered to assist States and Federal agencies in establishing volunteer programs.

*Guideline 1: Use volunteers in historic shipwreck research projects.* States and Federal agencies should encourage both sport diver and non-diver volunteers to help agencies conduct archival research and surveys to locate historic shipwreck sites, and map, photograph, excavate and protect historic shipwreck sites.

*Guideline 2: Ensure that volunteers are properly trained and supervised.* At a minimum, sport diver volunteers should be certified in SCUBA and all volunteers should be under the supervision of qualified professionals. Advanced SCUBA certification and specialty courses such as wreck diving, search and recovery, underwater photography and underwater archeology should be encouraged to improve diving skills needed for diving sensitive wrecks (see Guidelines for Education for recommended underwater archeology course curriculum). In evaluating a volunteer's skills, agencies should recognize avocational experience and training courses completed out-of-State.

*Guideline 3: Maintain lists of volunteers.* States and Federal agencies should maintain a list of sport divers who have completed underwater archeology training courses as well as other persons who have shown an interest in volunteering as a source of volunteers for shipwreck survey and research projects.

*Guideline 4: Establish a liaison with interest groups.* States and Federal agencies should establish a liaison to help advise and organize volunteers

within the State. The existing network of dive associations, clubs, and shops could be used to disseminate information to interested divers.

*Guideline 5: Recognize the contributions of volunteers.* Individual volunteers and volunteer societies should be recognized for their contributions to shipwreck discovery, research, and preservation. Some forms of recognition could include:

(a) Naming shipwreck sites after the person who discovered it;

(b) Issuing certificates or plaques to persons and organizations that discover shipwreck sites or worked as volunteers on shipwreck research projects;

(c) Naming volunteers and discoverers in museum exhibits, newspaper and magazine coverage, and publications; and

(d) Offering qualified individuals who discover a shipwreck first option to apply for an archeological permit to study the site or a salvage permit to recover the shipwreck.

*Guidelines for Establishing Underwater Parks and Preserves*

Section 4(b) of the Act encourages States to establish underwater parks or areas to provide additional protection for shipwreck sites. Other positive results of creating underwater parks or areas would be to (1) increase the public's awareness and appreciation for the nation's maritime heritage, (2) provide additional recreational opportunities for sport divers, and (3) provide additional protection for natural resources and habitat areas. The following guidelines are offered to assist States in establishing underwater parks and preserves.

*Guideline 1: Consult with the various interest groups.* States should hold public meetings and consult with the various interest groups (sport divers, dive boat operators, dive shops, fishermen, archeologists, historic preservationists, local chambers of commerce, local and regional recreation and tourism organizations, pertinent State and Federal agencies, and others) for suggestions on establishing and operating underwater parks and preserves.

*Guideline 2: Prepare an environmental and economic impact assessment.* Prior to establishing an underwater park or preserve, States should prepare an assessment of the environmental and economic impacts that would result. Assessments should include discussion of natural and cultural resources present and their current uses; potential recreational, educational, preservation and tourism benefits; and potential costs for park or preserve operations. Draft assessments should be made available to the State's shipwreck advisory board, if one exists, and the various interest groups for public review and comment.

*Guideline 3: Specify the unit's purpose, significance, boundaries, and any special conditions and constraints.* Legislation or regulations authorizing an underwater park or preserve should establish the unit's purpose and significance, specify its boundaries, and identify any special conditions and constraints. If the unit is to be managed by a Federal agency on behalf of a State, the enabling legislation or management agreement should clearly indicate that the unit's resources are to be managed according to the Federal agency's policies and procedures for managing similar federally-owned parks or preserves. If the enabling legislation or management agreement for existing federally managed submerged lands of a State does not address this issue, the State and the Federal agency should enter into a written agreement which specifies that the Federal agency shall manage the unit's resources consistent with Federal historic preservation and land management statutes, regulations, policies, and procedures.

*Guideline 4: Develop a general management plan.* A general management plan should be prepared to guide future planning and actions for each underwater park or preserve. A general management plan should discuss the unit's legislated purpose and significance; identify major issues affecting management and use of the unit and its resources; and identify management objectives, planning needs and priorities.

*Guideline 5: Develop a resource management plan.* A resource management plan should be prepared to develop multiyear programming and action schedules for each underwater park or preserve. A resource management plan should discuss the significance and condition of known natural and cultural resources; assess the potential presence of as yet unknown resources; identify inventory, evaluation, documentation, preservation, and interpretation needs, priorities, and cost estimates; and discuss impacts on the resources from natural causes, visitor use, park development and other sources. The plan should be revised periodically to reflect scientific data collected during inventories, preservation treatments, and changing environmental conditions, visitor uses, and park priorities.

*Guideline 6: Interpret shipwreck sites in parks and preserves.* Shipwreck sites in parks and preserves should be marked with buoys and appear on nautical charts to encourage and promote recreational exploration. Recognizing that shipwreck sites are of interest to non-divers as well as divers, interpretive materials should be developed for both interest groups. For example, permanent signs could be placed in and around the wreck site as part of an underwater trail. Brochures and other publications describing the park or preserve's wrecks should be made available. Dock side exhibit areas and a maritime museum could be established for the park, or interpretive materials made available to the local community's museum or historical society. Video tapes also could be made available for viewing in an exhibit area or museum, and for purchase.

*Guideline 7: Protect shipwreck sites in parks and preserves.* Moorings should be placed at shipwreck sites or dive boats should be required to anchor off site to protect shipwreck sites, natural areas, geological features, and habitat areas from inadvertent anchor damage. Activities that would cause adverse affects should be prohibited or restricted so that shipwreck sites and other resources remain intact for the enjoyment of sport divers now and in the future. For example, collecting souvenirs and commercial wreck salvaging should be prohibited. Dredging and trawling should be restricted to those areas of the park or preserve that do not contain shipwreck sites, natural areas, geological features, and habitat areas. In addition, archeological research should be regulated through a permit system.

*Guideline 8: Add new dive sites to parks and preserves.* States should consider including non-historic shipwrecks in underwater parks and preserves to increase the number of interesting wreck dive sites and to reduce normal wear and tear at all wreck dive sites. If none are available, States should consider sinking non-historic vessels and structures such as rigging from drilling platforms that no longer are needed.

*Guidelines for Treatment of Non-Historic Shipwrecks*

The majority of the abandoned shipwrecks whose title was asserted by the United States under the Act are probably non-historic in nature, meaning they would not meet the criteria for listing on the National Register of Historic Places. While these shipwreck sites may not be of historic importance, they may nonetheless provide recreational and educational opportunities for sport divers. In

addition, fishermen often seek out shipwreck sites because the wrecks often provide good habitat for marine life. Some shipwrecks contain commercial cargo sought after by salvors. Others may contain "treasure" such as bullion and gems that have monetary value but often have limited historical value.

The following guidelines are offered to assist State and Federal agencies in making decisions about the treatment of non-historic shipwrecks under their jurisdiction or control.

*Guideline 1: Determine the public interest in shipwreck sites.* Prior to making any decisions about how to treat a non-historic shipwreck site under its jurisdiction, State and Federal agencies should determine the extent of public interest in the site. Agencies should consult the various interest groups concerning existing and potential uses of the site. This important first step will help foster a cooperative relationship between the interest groups and the public agency. It also will enable the agency to select the most appropriate treatment for a particular site by weighing its multiple values.

*Guideline 2: Establish standard procedures for determining how to treat sites.* After consulting with the various interest groups and any shipwreck advisory board, if one exists, States and Federal agencies should establish policies, uniform criteria and procedures for making decisions regarding appropriate treatments, including the collection of souvenirs and the commercial salvage, of non-historic shipwrecks. The procedures should include a process whereby any person may appeal a State's decision on how to treat a particular non-historic shipwreck.

*Guideline 3: Provide recreational access to non-historic shipwrecks.* Non-historic shipwrecks should be accessible to the public for recreational diving and souvenir collecting with few, if any, restrictions. For example, restrictions might be considered when a particular shipwreck site is being commercially salvaged.

*Guideline 4: Provide access to non-historic shipwrecks for commercial salvage.* Non-historic shipwrecks generally should be available for commercial salvage with few, if any, restrictions. Federal agencies must follow the requirements set forth in section 310 of title 40 of the United States Code as well as any agency specific statutes and regulations for the salvage of wrecked, abandoned, or derelict property under the agency's jurisdiction. In addition, State and Federal agencies should condition or prohibit salvage operations that would:

(a) Impede navigation in existing Federal navigation channels;

(b) Damage or destroy important natural areas, geologic formations, or habitat areas (e.g., an ecological preserve or coralline formations protected under Federal or State statute, order or regulation);

(c) Damage or destroy a shipwreck site that has high recreational or educational value that generates substantial revenues for the local economy; or

(d) Damage or destroy a shipwreck site that the State or others purposefully have sunk to provide additional sites for recreational diving or commercial fishing.

If there are reasons to allow the commercial salvage of the kinds of shipwreck sites identified in subparagraph (c) or (d) of this guideline, conditions should be placed on the salvor to provide alternative dive sites.

*Guideline 5: Protect non-historic shipwrecks located in parks and preserves.* The purpose of most State and Federal parks, preserves, and sanctuaries is to protect significant cultural or natural resources or to provide recreational and educational opportunities for the public. Agencies that create such areas are obligated to maintain and develop the resources for public use. Souvenir collecting and commercial salvage destroy or damage resources and reduce their recreational and educational values. These and other damaging activities should be prohibited within State underwater parks and preserves, National Marine Sanctuaries, and units of the National Park System. Because some State-owned submerged lands are managed by Federal agencies, management agreements between those States and Federal agencies should set forth any special requirements concerning the management of State-owned shipwrecks within the federally managed units. At a minimum, agreements between States and the National Park Service should prohibit souvenir collecting and commercial salvage of historic shipwrecks located within State-owned units of the National Park System.

*Guideline 6: Transfer title to artifacts recovered from non-historic shipwrecks to the person who recovered them.* When making salvage awards for the commercial salvage of non-historic shipwrecks, States should transfer title to the salvaged materials to the salvor. Title to souvenirs collected by sport divers from non-historic shipwrecks also should be transferred to the sport diver collector.

*Guidelines for Archeological Recovery of Historic Shipwrecks*

As non-renewable public resources, State and federally-owned historic shipwrecks should be managed in a manner that protects and preserves them for the public. The archeological recovery of all or parts of historic shipwrecks enables underwater archeologists and maritime historians to collect new data or confirm archival documentation regarding a specific vessel, a type or method of construction, an historic event or period, or a culture. Historic shipwrecks under the jurisdiction of State and Federal agencies should be made available to scientists for study and excavation, consistent with the following guidelines.

*Guideline 1: Issue Federal archeological permits in accordance with the Archaeological Resources Protection Act.* Federal agencies must review and approve or deny requests for the archeological recovery of historic shipwrecks located on public and Indian lands by following the permitting requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*), its uniform regulations (43 CFR Part 7; 36 CFR Part 296; 18 CFR Part 1312; 32 CFR Part 229), any agency specific supplemental regulations, and other agency specific statutes and regulations concerning the excavation of archeological resources on public and Indian lands.[1] Guideline No. 3 under Guidelines for Managing Shipwrecks Under Federal Jurisdiction summarizes the permitting requirements set forth under those statutes and regulations.

*Guideline 2: Develop an archeological permit process for State-owned shipwrecks.* Each State should establish permitting requirements and procedures for the archeological recovery of State-owned historic shipwrecks after consulting with the various interest groups and the State's shipwreck advisory board, if one exists. The procedures should include a process whereby an applicant or permittee may appeal a State's decision to issue, modify, suspend, revoke or deny a permit. States are encouraged to hold public meetings to ensure that all affected persons have an opportunity to voice their opinions.

[1] Abandoned shipwrecks located on the outer continental shelf are not subject to the provisions of the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*) and are unaffected by the Abandoned Shipwreck Act (43 U.S.C. 2101). Those shipwrecks remain under the jurisdiction of Federal admiralty law.

*Guideline 3: Ensure that the State permit process requires work to be done in a professional manner.* At a minimum, State archeological permitting procedures should ensure that:

(a) The applicant meets pertinent professional qualifications to carry out the proposed activity;

(b) The proposed activity is for the purpose of furthering archeological and historical knowledge in the public interest;

(c) The artifacts, material remains, and associated records will be preserved in a suitable repository;

(d) The artifacts and materials that are recovered will remain the property of the State;

(e) The proposed activity is fully consistent with the State's historic preservation management plan and other established plan for the shipwreck site, underwater park or preserve; and

(f) The applicant has secured other necessary State or Federal permits.

*Guideline 4: Protect environmental, recreational, and educational values.* Federal and State agencies should condition or prohibit activities conducted under an archeological permit that would:

(a) Impede navigation in existing Federal navigation channels;

(b) Damage or destroy important natural areas, geologic formations, or habitat areas (e.g., an ecological preserve or coralline formations protected under Federal or State statute, order or regulation); or

(c) Damage or destroy a shipwreck site that has high recreational or educational value.

*Guideline 5: Make the results of archeological studies available.* Federal and State agencies should ensure that the results of the activities conducted under an archeological permit will be made available to the public and the professional community. For example, articles, brochures, books, video tapes, slide shows, exhibits, or underwater trails for the public should be prepared, or existing ones updated. Articles written for the public should be published in popular national and regional magazines. A scientific report always should be prepared and made available to the professional community. Copies of reports also should be provided to the State Historic Preservation Officer, the State Archeologist, and appropriate Federal Historic Preservation Officers so that the data collected can be incorporated into Federal and State historic preservation plans. Permittees also should be encouraged to deliver papers at scientific meetings and publish articles in professional journals.

*Guideline 6: Involve public and private interests in permitted activities.* Federal and State agencies should encourage permittees to involve appropriate public and private interests such as sport divers, avocational archeologists, corporate and private sponsors, and commercial photographers in permitted activities. For example, sport divers and avocational archeologists might volunteer their skills on a mapping project or excavation. Volunteers should be properly supervised by qualified professionals appropriate to the nature of the volunteer work (i.e., archival research, underwater excavation, or conservation of artifacts recovered). Corporate sponsors or commercial businessmen might donate the use of a survey vessel, supplies, and equipment in exchange for media rights.

*Guidelines for Considering and Mitigating Effects of Federal Activities on Historic Shipwrecks*

Some activities that are carried out, funded or licensed by Federal agencies have the potential to affect historic shipwrecks. Examples would include dredging, discharge of material into a waterway, construction of harbor facilities, mineral exploration or development, wreck and drift removal, salvage of shipwrecks, wildlife habitat improvement, and shoreline or channel improvement. Such activities are subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470). In such cases, the responsible Federal agency must comply with the implementing regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation. The following guidelines are offered to assist Federal agencies in complying with these and other requirements under section 110 of the same Act.

*Guideline 1: Consider the effects of Federal undertakings on historic shipwrecks on a project by project basis.* In consultation with the pertinent State Historic Preservation Officer and other persons knowledgeable about or concerned about historic shipwrecks and other submerged historic properties in the.project area, the responsible Federal agency should:

(a) Identify shipwrecks and other historic properties subject to possible effect by the undertaking, and evaluate them to determine their eligibility for inclusion in the National Register of Historic Places;

(b) If shipwrecks or other historic properties included in or eligible for inclusion in the National Register are identified, determine whether the undertaking will affect them and, if so, whether the effect will be adverse;

(c) If adverse effects will occur, seek ways to avoid or reduce such effects and, if agreement is reached on how to avoid or reduce such effects, execute a Memorandum of Agreement that sets forth the agreed upon measures, and insure that the terms of the Agreement are implemented;

(d) Afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. For example, the Advisory Council might participate in development or execution of the Agreement, or approve the Agreement executed by the State and Federal agency. In the absence of an Agreement, the Advisory Council should review the undertaking and render formal comment to the responsible agency head; and

(e) In cases of an emergency or the unexpected discovery of shipwrecks or other properties that are or may be historic, carry out special expedited procedures to consider and, where feasible, reduce adverse effects on such properties.

*Guidline 2: Consider effects on a programmatic basis.* As an alternative to the project by project approach discussed in Guideline No. l (above), certain Federal agencies should consult with the Advisory Council and other interested parties to develop and implement a Programmatic Agreement or counterpart regulations to establish special agency specific procedures for the identification, consideration, and protection of historic shipwrecks and other historic properties. Such agencies would include those that have ongoing management responsibilities for submerged lands that may contain historic properties, and Federal agencies that conduct, fund or regulate recurrent activities that rnay affect such properties.

*Guideline 3: Consider effects using State review procedures.* In certain States, the Advisory Council and the State Historic Preservation Officer have entered into an agreement to allow the State's special review and consultation process to substitute for the procedures set forth in the Advisory Council's regulations. In those States, a Federal agency may, at its discretion, comply with the State's process in lieu of compliance with the Advisory Council's regulations.

*Guideline 4: Consult with State shipwreck management agencies when State-owned historic shipwrecks may be affected:* Where a Federal, federally assisted or federally regulated undertaking will have adverse effects on

a State-owned historic shipwreck, the State agency responsible for regulating access to the wreck should be afforded the opportunity to be a consulting party during the section 106 consultation process.

*Guideline 5: Include the various interest groups in the consultation process.* The Advisory Council's regulations allow for and emphasize the participation of "interested persons" during the section 106 consultation process. "Interested persons" are defined in subsection 800.2(h) of those regulations as "those organizations and individuals that are concerned with the effects of an undertaking on historic properties." "Interested persons" that should be contacted for information regarding the identification of historic shipwrecks and consideration of the undertaking's potential effects on those sites include the:

(a) State agency responsible for regulating shipwreck access;

(b) Federal, State, regional, and local governmental agencies, Indian tribes, and private landowners having control or jurisdiction over the submerged lands, shipwrecks, or adjacent lands;

(c) Sport divers, dive instructors, dive boat operators, fishermen, and salvors interested in shipwrecks; and

(d) Historic, archeological, curatorial and other organizations interested in historic shipwrecks.

*Guideline 6: Document historic shipwrecks that will be destroyed or substantially altered.* Where a Federal or federally assisted undertaking will destroy or substantially alter a historic shipwreck site, section 110(b) of the National Historic Preservation Act (16 U.S.C. 470) requires that each Federal agency ensure that appropriate records are made of the site and deposited in the Library of Congress or other institution designated by the Secretary of the Interior. The level of recordation should be agreed upon by the Federal agency, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation as a part of the consultation process under section 106 of the same Act.

*Guideline 7: Minimize harm to historic shipwrecks designated as National Historic Landmarks.* Where a Federal undertaking will directly and adversely affect an historic shipwreck designated as a National Historic Landmark, section 110(f) of the National Historic Preservation Act (16 U.S.C. 470) requires that each Federal agency take steps, to the maximum extent feasible, to minimize harm to the landmark and afford the Advisory Council on Historic Preservation an opportunity to comment on the undertaking.

*Guidelines for Managing Shipwrecks Under Federal Jurisdiction*

Federal agencies are responsible for managing and protecting historic shipwrecks under their control or jurisdiction. The Antiquities Act of 1906 (16 U.S.C. 431–433) was the first statute to set forth these responsibilities. The Abandoned Shipwreck Act (43 U.S.C. 2101) is the latest in a series of historic preservation laws. Two other statutes that set forth the most comprehensive listing of Federal historic preservation responsibilities are the National Historic Preservation Act (16 U.S.C. 470) and the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*). These and related preservation and land management statutes establish more stringent requirements for protecting federally owned and administered historic properties than does the Abandoned Shipwreck Act. Recognizing the differences, the Congress addressed the matter in the legislative history accompanying the Abandoned Shipwreck Act. The Congress clearly indicated that historic shipwrecks within units of the National Park System are to be preserved, regardless of whether they lie in State or Federal waters.

The following guidelines are offered to assist Federal agencies in managing historic shipwrecks under their control or jurisdiction.

*Guideline 1: Manage historic shipwrecks in accordance with the National Historic Preservation Act.* In accordance with section 110 of the National Historic Preservation Act (16 U.S.C. 470), where a Federal agency owns or controls submerged lands, the agency must:

(a) Assume responsibility for the preservation of historic shipwreck sites located on federally-owned or controlled submerged lands;

(b) To the maximum extent feasible, use historic shipwreck sites under their ownership or control for agency purposes (examples might include studying and interpreting the sites for the public);

(c) In accordance with appropriate professional standards, take steps to preserve historic shipwreck sites under their ownership or control (examples might include stabilizing and preserving historic shipwrecks in place, and recording and recovering sites when preservation in place is not feasible);

(d) In cooperation with the State Historic Preservation Officer, establish programs to locate, inventory, and nominate historic shipwrecks under their ownership or control for inclusion in the National Register of Historic Places;

(e) Exercise caution to ensure that historic shipwreck sites under their ownership or control are not inadvertently transferred, sold, destroyed, substantially altered, or allowed to deteriorate significantly;

(f) Where a Federal or federally assisted undertaking will destroy or substantially alter a historic shipwreck site, ensure that appropriate records are made of the site and deposited in the Library of Congress or other institution designated by the Secretary of the Interior. The level of recordation should be agreed upon by the Federal agency, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation as a part of the consultation process under section 106 of the National Historic Preservation Act (16 U.S.C. 470); and

(g) Where a Federal undertaking will directly and adversely affect a historic shipwreck designated as a National Historic Landmark, to the maximum extent feasible, take steps to minimize harm to the landmark and afford the Advisory Council on Historic Preservation an opportunity to comment on the undertaking.

*Guideline 2: Use the Secretary of the Interior's guidelines.* In accordance with subsection 101(f) of the National Historic Preservation Act (16 U.S.C. 470), the National Park Service developed "Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act." The "Section 110 Guidelines" are designed to assist Federal agencies in complying with their responsibilities under that Act. Copies of the "Section 110 Guidelines," issued on February 17, 1988 (53 FR 4727), may be obtained from the Interagency Resources Division of the National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

*Guideline 3: Issue archeological permits in accordance with the Archaeological Resources Protection Act.* Federal land managing agencies must manage and protect historic shipwrecks located on submerged lands under their ownership and administration, except the submerged lands on the outer continental shelf, in accordance with the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*), its uniform regulations (43 CFR Part 7; 36 CFR Part 296; 18 CFR Part 1312; 32 CFR Part 229), any agency specific supplemental regulations, and other agency specific statutes and regulations. Under these statutes and regulations, Federal land managing agencies must allow for the excavation

or removal of a historic shipwreck site when the following conditions are met:

(a) The permit applicant is qualified to carry out the activity;

(b) The proposed activity is for the purpose of furthering archeological knowledge in the public interest;

(c) For an activity proposed on public lands, the artifacts and material remains that are recovered from the shipwreck site will remain the property of the United States, and the artifacts, material remains, and associated records will be preserved in a suitable repository;

(d) For an activity proposed on Indian lands, the Indian landowner and Indian tribe having jurisdiction have consented to the proposed activity and, unless the Indian owner retains custody of the artifacts and material remains, the remains and copies of associated records will be preserved in a suitable repository;

(e) The proposed activity is fully consistent with any management plan applicable to the submerged lands under the agency's jurisdiction; and

(f) For an activity proposed on public lands at a site that may be of Indian tribal religious or cultural importance, the Federal land managing agency has notified the appropriate Indian tribe.

*Guideline 4: Establish a procedure for treating human remains in shipwreck sites.* Where a shipwreck contains human remains, the Federal agency having jurisdiction should make a reasonable effort to contact relatives of the deceased to discuss the most appropriate treatment of the remains. Until the agency makes a decision regarding disposition, it should refrain from taking any action that would disturb the remains. All remains should be treated with dignity and respect.

*Guideline 5: Establish a procedure for confirming the abandonment of shipwrecks.* If a Federal agency has reason to believe that a shipwreck site located in its waters may not be abandoned, prior to taking any action that would affect the shipwreck the agency should take steps to confirm that the shipwreck was abandoned and that the agency now holds title to the wreck. If the shipwreck is thought to be a United States warship or other vessel used at the time of sinking only on United States Government noncommercial service, the agency should contact the Office of the Judge Advocate General in the United States Department of the Navy, Washington, DC 20350 for assistance. If the shipwreck is thought to be a warship belonging to another sovereign nation, or other vessel used at the time of sinking by another sovereign nation only on non-commercial service, the agency should contact the Bureau of Oceans and International Environmental and Scientific Affairs in the United States Department of State, Washington, DC 20520 for assistance. If the shipwreck is not abandoned, the agency should contact the title holder concerning the management, protection and disposition of the vessel. If the shipwreck is the property of another sovereign nation, any contact with that nation should be through the United States Department of State.

*Guideline 6: Protect historic shipwrecks located in units of the National Park System.* The National Park Service and appropriate States should enter into agreements for the management and protection of shipwrecks located in units of the National Park System where the State holds title to the submerged lands and shipwrecks. Such agreements should stipulate that the National Park Service shall manage and protect historic shipwrecks in a manner consistent with Federal historic preservation and land management statutes, regulations, policies, and standards.

*Guideline 7: Issue contracts to preserve, sell, or collect abandoned shipwrecks on public lands in accordance with Federal property management statutes.* Section 310 of Title 40 of the United States Code authorizes the General Services Administration to issue contracts for the preservation, sale, or collection of wrecked, abandoned, or derelict property under the jurisdiction of the United States Government. The General Services Administration generally will issue contracts only when there is no cost to the Federal Government and the Federal agency that has jurisdiction over the lands gives its permission. If the Federal land managing agency determines that the property is of "archeological interest," as defined under the Archaeological Resources Protection Act (16 U.S.C. 470*aa–ll*), the agency would ordinarily deny the request. If property is recovered, the Federal land managing agency would determine its monetary value and any third party rights prior to making an award to the finder. If there are no third party claims, finders usually receive 50 percent of the gross value of the property while the Government retains the remaining 50 percent. Persons interested in searching for wrecked, abandoned, or derelict property under Federal jurisdiction should contact the Property Management Division of the Federal Supply Service in the General Services Administration, Washington, DC 20406 as well as the appropriate Federal land managing agency for further information.

[FR Doc. 89–7960 Filed 4–3–89; 8:45 am]
BILLING CODE 4310–70–M

federal register

Tuesday
April 4, 1989

Part V

# Department of Health and Human Services

## Alcohol, Drug Abuse, and Mental Health Administration

## Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** National Institute on Drug Abuse.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published *bi-monthly*, updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

**FOR FURTHER INFORMATION CONTACT:** Office of Workplace Initiatives, National Institute on Drug Abuse, Room 10A–53, 5600 Fishers Lane, Rockville, Maryland 20857.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

(Submitted for publication in the **Federal Register** on April 4, 1989.)

American BioTest Laboratories, Inc., 3350 Scott Boulevard, Building 15, Santa Clara, CA 95054, 408–727–5525

American Medical Laboratories, 11091 Main Street, P.O. Box 168, Fairfax, VA 22030, 703–691–9100

Center For Human Toxicology, 417 Wakara Way, Rm. 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Chem-Bio Corporation, 140 E. Ryan Road, Oak Creek, WI 53154, 800–365–3840

CompuChem Laboratories, Inc., Western Division, 600 West North Market Boulevard, Sacramento, CA 95834, 916–923–0840 (name changed: formerly ChemWest Analytical Laboratories, Inc.)

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263

Doctors and Physicians Laboratory, 801 E. Dixie Ave., Leesburg, FL 32748, 904–787–9006

Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405–636–7041

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312–595–3888

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000

MedTox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612–636–7466

National Center for Forensic Science, A Division of Maryland Medical Laboratory, Inc., 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratories, Inc.)

Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619–278–5900

Northwest Toxicology, Inc., 1141 East 3900 South, Salt Lake City, UT 84124, 800–322–3361

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

SmithKline Bio-Science Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312–835–2010 (name changed: formerly International Toxicology Laboratories, Inc.)

SmithKline Bio-Science Laboratories, 8000 Sovereign Row, Dallas, TX 75247 (name changed: formerly International Clinical Laboratories) 214–638–1301

South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166

**Charles R. Schuster,**

*Director, National Institute on Drug Abuse*

[FR Doc. 89–8108 Filed 4–3–89; 8:45 am]

BILLING CODE 4160–20–M

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## LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington,

DC 20402 (phone 202-275-3030).

**S. 553/Pub. L. 101-7**

To provide for more balance in the stocks of dairy products purchased by the Commodity Credit Corporation. (Mar. 29, 1989; 103 Stat. 9; 1 page) Price: $1.00

**S.J. Res. 87/Pub. L. 101-8**

To commend the Governments of Israel and Egypt on the occasion of the tenth anniversary of the Treaty of Peace between Israel and Egypt. (Mar. 29, 1989; 103 Stat. 10; 2 pages) Price: $1.00